123-527

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~1284~~. 834 503 214

RICHARD B. CHAPMAN, PLAINTIFF IN ERROR,

vs.

EDWARD K. GOODNOW.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED MARCH 18, 1885.

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a *Pleas in the Supreme Court of Iowa.*

Be it remembered that on the 17th day of November, 1883, there was filed in the office of the clerk of the supreme court of Iowa an "abstract," the same, together with the endorsements thereon, being in the words and figures following, to wit:

1 Endorsed: "Received copy of this abstract, this 30th Nov. 1883. Theo. Hawley, def't's att'y."

Supreme Court of Iowa. June Term, A. D. 1883—Des Moines.

EDWARD K. GOODNOW
vs.
R. B. CHAPMAN,

EDWARD K. GOODNOW
vs.
SAMUEL G. WOLCOTT,
and
EDWARD K. GOODNOW
vs.
WM. J. MCALPINE.

No. 10771.

Appeal from the judgment of Webster district court.

George Crane, for appellant.
Theodore Hawley, for appellee.

Appellant's Abstract.

On the 5th of August, 1876, plaintiff filed his petition in said circuit court of Webster county, stating his cause of action as follows:

Par. 1st. The said Edward K. Goodnow, the plaintiff herein, respectfully represents unto said court that the Iowa Home-
2 stead Company is a corporation duly organized and existing under and by virtue of the laws of the State of Iowa; that on or about the year A. D. 1863 the said Homestead Company received from the Dubuque & Sioux City Railroad Company, a corporation also existing under and by virtue of the laws of Iowa, a deed, duly signed, executed, and delivered by said railroad company, purporting to convey in fee-simple absolute to the said Homestead Company the following described real estate, that is to say:

The northwest quarter section five (5), northeast quarter section 19, township eighty-eight (88), range 27; east half southeast quarter section one, northwest fr. quarter and west half of southwest quarter section 7, township 87, range 27; northeast quarter section 9, south half section 9, northeast quarter section 17, township 88, range 28, all in Webster county, Iowa.

Par. 2d. Plaintiff further avers that from and after the execution and delivery of said deed as aforesaid until the year A. D. 1873 the

said Homestead Company honestly and in good faith believed that it was the absolute owner of, and held a good and valid title to, the land aforesaid. But in the year A. D. 1873 the Supreme Court of the United States, in a suit therein pending for the purpose of testing the right and title of said Homestead Company to said lands, decided finally that said company was not the owner thereof, and never had any right or title thereto; since which time said company has not claimed to be the owner of said land.

Par. 3d. Plaintiff further avers that during the continuation of such belief and claim of ownership the said Homestead Company gave or delivered over to Webster county, a municipal corporation, organized and existing under the laws of the State of Iowa, and within whose Territorial limits said lands are situated, the taxes duly assessed and levied by said county upon said lands, that is to say, the following amounts for the following years, respectively:

3

For the year 1864	$112 00
For the year 1865	192 80
For the year 1866	235 25
For the year 1867	140 20
For the year 1868	162 65
For the year 1869	215 35
For the year 1870	251 10
For the year 1871	290 50

And took from said county receipts showing the amounts so handed over to said county.

Par. 4th. Plaintiff further avers that the taxes so assessed and levied by said county on and against said lands, became and were a valid and binding lien thereon in favor of said county, which said lien was paramount to all other liens or incumbrances thereon; that long prior to the assessment and levy of said taxes upon said lands the said John Steiger, defendant herein, became and was the owner thereof, and ever since has been such owner, but of the defendant's said ownership said Homestead Company had no knowledge or notice at the time of receiving its deed therefor, nor till about the year 1873, and long after the payment of said taxes.

Par. 5th. Plaintiff further avers that said defendant has never paid to said county the taxes aforesaid or any part or parcel thereof.

Par. 6th. Plaintiff further avers that said county has always hitherto refused, and still refuses, to refund to said Homestead Company or assigns the taxes so given or delivered over to said county by said Homestead Company, as hereinbefore alleged, and said county has always hitherto refused, and still refuses, to take any steps whatever to collect the aforesaid taxes from the said defendant or any part thereof, or to enforce the lien given by the law upon said land to secure the due payment thereof.

Par. 7th. Plaintiff further avers that said county has the
4 legal right and power, and is in duty bound to collect the taxes aforesaid from the defendant, who was the legal owner of said lands at the time said taxes were levied against the same, and was justly bound to pay said taxes to said county.

Par. 8th. Plaintiff further avers that the said Iowa Homestead Company has assigned, transferred, and set over to the said plaintiff all right, title, claim, demand, or cause of action, either in law or equity, which said company may have had against said Webster county, or against the said defendant or any other person, on account of or by reason of the payment to said county of the aforesaid taxes. A copy of which assignment is hereto annexed, marked Exhibit B, and made part of this petition.

Par. 9th. Wherefore the plaintiff prays that an account be taken of the amount of taxes that defendant should pay, and that a decree for the amount so found to be due be entered up against said defendant in the name of the plaintiff, or in the name of said Webster county, for the use and benefit of plaintiff, and made a lien on the lands hereinbefore described; that said lands be ordered to be sold to pay off said decree; and that plaintiff have such other and further relief in the premises as equity and good conscience may require, and to this court may seem meet.

GEORGE CRANE,
Attorney for Plaintiff.

On January 19th, 1877, the defendant filed a demurrer to plaintiff's petition,

On the 12th of February, 1879, the county of Webster filed the following petition:

And now comes said Webster county, a party in the above-entitled cause, and as a substitute for the pleadings heretofore filed therein, pleads as follows:

That is to say, the said county now comes and claims the benefit of the commencement of this suit by the said plaintiff, and asks a decree or judgment against the said R. B. Chapman, defendant, as prayed for in the plaintiff's said petition.

Said county further says that the taxes mentioned in said petition were duly and legally assessed and levied by said county upon the lands therein mentioned at the times for the years and amounts and in the manner and form alleged and set forth in said petition, and that the said taxes at the times of the said several assessments became and were and still are a valid and binding lien upon said lands in favor of said county.

That at the times aforesaid and at the commencement of this suit the said R. B. Chapman was the owner in fee of the said lands, and still is in duty bound to pay said taxes to said county.

Said county further says that at and before the assessment aforesaid the said R. B. Chapman was and has been continuously ever since a non-resident of the State of Iowa.

Said county further says that said taxes have never been paid nor any part thereof, and that said defendant, R. B. Chapman, has never paid said taxes to said county or any part thereof, on the contrary the whole thereof is still due to said county from the said defendant.

Wherefore said county asks for a decree against said defendant, R. B. Chapman, for the sum of $1,200 and interest thereon, being the

amount of taxes due said county as above set forth, and that the same be made a special lien upon the lands described in said petition, and that said county have such other and further judgment, order or decree and relief as the court may deem meet and agreeable to equity and good conscience.

J. F. DUNCOMBE,
Attorney for Webster County.

And afterwards on the 5th of April, 1879, plaintiff filed the following amendment to his petition:

6 And now comes the plaintiff, E. K. Goodnow, and by way of amendment and addition to the petition heretofore filed says that the taxes mentioned in plaintiff's original petition were duly levied and assessed by the said Webster county against the lands of defendant at the times and in the manner and forms therein alleged. That at the time plaintiff's assignor gave or delivered to said county the taxes aforesaid it was agreed and understood that if the said county should receive or collect the said taxes of and from the said defendant, that the said county would repay the taxes so collected to plaintiff's assignor.

Plaintiff further says that before the levy and assessment of said taxes the said defendant was and has been continuously ever since then a non-resident of the State of Iowa.

Plaintiff further says that it was also agreed and understood that said county would sue defendant in its own name for the taxes mentioned in said petition, and in case it should collect the same would pay them to plaintiff's assignor.

Plaintiff further says that if said defendant refuses to pay said taxes to said county and claims that said taxes have been paid to said county through or by means of the plaintiff's assignor having given or delivered the same to the county then said defendant is bound to repay the same to plaintiff.

Wherefore plaintiff asks the relief in the premises heretofore prayed for, that a decree be entered in the name of said county against defendant for said fifteen thousand dollars and interest, and be made a special lien on the lands described in petition, and for such other and further relief as equity and good conscience may require.

GEORGE CRANE,
Attorney for Plaintiff.

April 5, 1879, defendant filed his answers to the petitions in the words following:

Par. 1. And now comes the defendant, R. B. Chapman, and for answer to the original petition of plaintiff, Edward K.
7 Goodnow, and the amendment thereto denies each and every allegation therein contained.

2. Said defendant further answering says that if said plaintiff ever had any right or cause of action against defendant for the recovery of said taxes or any sum of money on account or by reason of the plaintiff's having delivered or paid said taxes to said county, such cause of action arose or accrued to plaintiff more than five

years before the commencement of this suit, and is therefore barred by the lapse of time.

Par. 3. Said defendant further answering says that the said Homestead Company paid said taxes to said county voluntarily and without the request, knowledge, or consent of the defendant, and with full knowledge of all the facts and circumstances upon which defendant's claim of title to said lands was founded. Wherefore defendant asks to be dismissed with his reasonable cost and charges.

THEO. HAWLEY,
Defendant's Attorney.

Par. 1. And now comes the defendant, R. B. Chapman, and for answer to the pleadings or petition filed by said county of Webster, in this suit, says that said county is not a party plaintiff on the record, and is not entitled to ask for any relief in the character of plaintiff in this suit, and has no legal right to take advantage of or claim any benefit from the commencement of this suit by the said Edward K. Goodnow.

Par. 2. Said defendant further answering denies each and every allegation in said pleading or petition contained.

Par. 3. Said defendant further answering says that all of said taxes mentioned in said petition were duly paid by said Iowa Homestead Company as soon as the same became due, and said defendant is no longer liable therefor.

Par. 4. Said defendant further answering says that if said county ever had any right or cause of action against defendant
8 for the recovery of said taxes or any part thereof, said cause of action arose or accrued to said plaintiff more than five years before the commencement of this suit, and is therefore barred by the lapse of time.

Par. 5. Said defendant further answering says that said Iowa Homestead Company paid said taxes to said company voluntarily and without the request, knowledge, or consent of the defendant, and with full knowledge of the facts and circumstances upon which defendant's title to said lands was founded. Wherefore defendant asks to be dismissed with his proper costs.

THEO. HAWLEY,
Defendant's Attorney.

Afterwards to all the foregoing answers plaintiff filed replies denying all the allegations therein contained.

After said cause had been to the supreme court of this State, and reversed on June 3, 1881, the defendant filed herein an amendment to his former answer to the filing, of which the plaintiff consented and agreed to make no objection thereto during the further progress of this case. Said amendment is in the words following:

Comes now the defendant and, by leave of court first had and obtained, amends his answer herein, and alleges that in an action in which the said Iowa Homestead Company, the assignor of plaintiff, was plaintiff, and the Des Moines Navigation and Railroad Company, the defendant R. B. Chapman, and others, were defendants, commenced in the district court of Webster county, Iowa, and finally

determined in and by the Supreme Court of the United States, the said Homestead Company, prior to the date of alleged assignment of said cause of action, in the petition herein asserted and mentioned among other things the right to recover of the defendant therein the same taxes, the recovery of which is sought for in this action. That one of the issues made by the pleadings in said cause and determined by the proofs in said action was the right of the
9 said Homestead Company to recover the same identical taxes sought to be recovered in this action, and that it was in said action determined, adjudged, and found by said Supreme Court of the United States at the December term thereof for 1872 that the said Homestead Company was not entitled to recover said taxes or any part thereof, which said determination and judgment has never been in any manner set aside, vacated, or modified, but that the same remains and still is in full force and effect.

Further answering defendant avers that the several causes of action set up in plaintiff's petition accrued more than six years next before the commencement of this suit, and at all times since the date of the payment of said taxes this defendant was a citizen of the State of New York, and that by the laws of the State of New York all causes of action based upon an express or implied promise, not in writing, are barred after the expiration of six years from the date when said causes of action severally accrued; that the said several causes of action set up in plaintiff's petition are barred by the lapse of six years from the date when the same accrued under the laws of the State of New York, and that more than six years have elapsed from the time said causes of action severally accrued and the date of the commencement of this suit.

March 13, 1883, defendant filed an amendment to his answer in these words: Comes now the defendant and, by leave of court first had and obtained, amends his answer herein, and says that the question of title and ownership of the lands mentioned and described in plaintiff's petition herein, as between the assignor of plaintiff and defendant's grantor, was definitely decided and determined at the December term of the Supreme Court of the United States for 1866 in the case of Wolcott *vs.* The Des Moines Navigation & Railroad Company and Burr *vs.* the same company, and reported in 5 Wallace, pages 681 and 689.

THEO. HAWLEY,
Defendant's Attorney.

10 And afterwards plaintiff filed his reply, in the words following:

And now comes plaintiff, Edward K. Goodnow, and for reply to the answer of the defendant, R. B. Chapman, says that the judgment set up therein as an adjudication of the rights of the plaintiff is and was null and void, for the reason that the courts of the United States had no jurisdiction of said suit and no legal power or authority to render a decree or judgment therein.

Plaintiff denies each and every allegation in said answer contained and asks for a judgment as heretofore prayed.

GEORGE CRANE,
Attorney for Plaintiff.

The following copies of the certificate under which the lands in controversy are claimed by the grantors of the Iowa Homestead Company were read in evidence by the defendant:

GENERAL LAND OFFICE, *Feb.* 26, 1863.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages one to four, inclusive, is a true and correct list of the tracts of land within the six-mile limits granted to the State of Iowa by the act of Congress approved the 15th day of May, 1856, entitled An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State, being the vacant and unappropriated lands in the alternate sections designated by odd numbers for six sections in width on each side of the railroad "from the city of Dubuque to a point on the Missouri river near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road," known as the Dubuque and Sioux City (late Dubuque and Pacific) railroad, within the State of Iowa, and they are now submitted for the approval of the Secretary of the Secretary of the Interior, in accordance with the requirements of said act of
11 the 15th of May, 1856, subject to all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first above written.

[L. S.] J. M. EDMUNDS,
Commissioner.

(Written in red ink on margin:) Making in the aggregate fifty-six thousand four hundred seventy-three acres and thirty-two hundredths of an acre.

DEPARTMENT OF THE INTERIOR, *April 7th*, 1863.

Approved, subject to the conditions and rights above mentioned.

J. P. USHER, *Secretary.*

GENERAL LAND OFFICE, *Feb. 26th*, 1863.

I, J. M. Edmunds, Commissioner of General Land Office, do hereby certify that the foregoing, on pages one to two, inclusive, is a true and correct list of the tracts of land selected by the agent of the State of Iowa outside of the six and within the fifteen mile limits, under the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State." The said selections being from the lands of the United States in the alternate sections designated by odd numbers most contiguous to the tier of sections within six sections in width on

each side of the railroad "from the city of Dubuque to a point on the Missouri river, near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road," known as
"the Dubuque and Sioux City (late Dubuque and Pacific)
12 railroad, and being in lieu of the lands in the alternate sections designated by odd numbers within said six sections in width on each side of said road which the United States had legally sold, or to which the right of pre-emption had legally attached, prior to the period at which the right of the State inured under said grant; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

J. M. EDMUNDS,
Commissioner.

DEPARTMENT OF THE INTERIOR, *April 7th*, 1863.

Approved, subject to the conditions and rights above mentioned.

J. P. USHER, *Secretary.*

(Written in red ink on margin:) Making in the aggregate twenty-one thousand and sixty-one acres and ninety-one hundredths of an acre.

GENERAL LAND OFFICE, *October* 31*st*, 1864.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the foregoing, on page one, is a true and correct list of the tracts of land within the six-mile limits granted to the State of Iowa by the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads
in said State," being the vacant and unappropriated lands in
13 the alternate sections designated by odd numbers for six sections in width on each side of the railroad from the city of Dubuque to a point on the Missouri river, near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, known as the Dubuque and Sioux City (late Dubuque and Pacific) railroad, within the State of Iowa; and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of 15th of May, 1856, subject to all its conditions and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year hereinabove written.

[L. S.] J. M. EDMUNDS,
Commissioner.

DEPARTMENT OF THE INTERIOR, *December* 13, 1864.

Approved, subject to the conditions and rights above mentioned.

J. P. USHER, *Secretary.*

(Written in red ink on margin:) Making in the aggregate one hundred and fifty-nine acres and sixty hundredths of an acre.

I, Aaron Brown, register of the State land office of the State of Iowa, do hereby certify that the foregoing are true copies of the certificates affixed to supplemental lists numbered 33, 34, and 43, on file in this office, embracing the odd numbered sections of land within the five-mile limits of the Des Moines river, which were approved and certified to the State of Iowa, by the Department of the Interior under act of Congress of May 15th, 1856, to aid in the construction of a railroad from the city of Dubuque to a point
14 on the Missouri river, near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, and that said lists embrace in the aggregate seventy-seven thousand six hundred and ninety-four and eighty-three hundredths of an acre (77,694.83).

In testimony whereof, I have hereunto subscribed my name and affixed the seal of my office, this 26th day of February, 1872.

[SEAL.] AARON BROWN, *Register.*

On the 22d day of May, 1882, the plaintiff filed in the circuit court of Webster county, Iowa, motions supported by affidavits in words and figures following, to wit:

Motion for Change of Venue.

In the Circuit Court of Webster County.

EDWARD K. GOODNOW *vs.* R. B. CHAPMAN.

Now comes Edward K. Goodnow, plaintiff, and moves the court that the venue of this action be changed to the district court of Iowa, in and for Webster county, on the grounds stated in the following affidavits.

M. D. O'CONNELL AND GEO. CRANE,
Attorneys for Plaintiff.

STATE OF IOWA, }
County of Webster, } *ss:*

In the Circuit Court of said County.

EDWARD K. GOODNOW *vs.* R. B. CHAPMAN.

I, Edward K. Goodnow, being previously sworn, depose and say that I am a plaintiff in the above-entitled action; that
15 D. D. Miracle, judge of this court, is, to the best of my knowlege and belief, so prejudiced against me that I cannot obtain a fair trial before him, and that the existence of such prejudice was not known to me prior to the last continuance of this cause.

E. K. GOODNOW.

STATE OF NEW YORK, *County of New York:*

I, A. C. Vaughn, a notary public in and for said county and State of New York, do hereby certify that the foregoing affidavit was sworn to and before me and subscribed in my presence by Edward K. Goodnow, this 8th day of May, A. D. 1882.

Witness my hand and notarial seal.

[SEAL.] A. C. VAUGHN,
Notary Public, Kings County.

Certificate filed in New York county.

STATE OF IOWA, *County of Webster:*

In the Circuit Court of said County.

EDWARD K. GOODNOW *vs.* R. B. CHAPMAN.

John I. Mullany, Edwin B. Farley, and W. P. Dyer, being first duly sworn, depose and say: That they are not related to the plaintiff in this action nearer than the fourth degree, nor do they or any of them stand in the relation of servants, agents, or employés of said plaintiff, nor are they in any other way interested in the result or issue of this action; and they do verily believe that the Hon. D. D. Miracle, judge of the circuit court of Iowa, in and for said Webster county, is so prejudiced against plaintiff that he cannot obtain a fair trial of said cause before said judge, and that such prejudice was unknown to plaintiff before the last continuance.

JOHN I. MULLANY.
EDWIN B. FARLEY.
W. R. DYER.

16 Subscribed and sworn to before me, by John I. Mullany, Edwin B. Farley, and W. R. Dyer, this 19th day of May, 1882.

[L. S.] W. G. JOERNS,
Notary Public of Iowa in and for Dubuque County.

And said motion coming on to be heard on the 22d day of May, 1882, the court granted the same and made an order transferring said cause to the district court of said county for trial; to all of which the defendants then and there excepted.

Afterwards, on the 2d day of October, A. D. 1883, this cause coming on for final hearing, the same was submitted to the court on the pleadings and the following agreed statements of fact and evidence, to wit:

Agreed Facts.

In the Circuit Court of Webster County, Iowa.

EDWARD K. GOODNOW *vs.* R. B. CHAPMAN and WEBSTER COUNTY.

In the Circuit Court of said County.

For the benefit of all parties to this suit, it is hereby stipulated and agreed as follows:

It is admitted that the facts set forth in the first, second, and eighth paragraphs of plaintiff's original petition are true. It is further admitted that prior to the year 1864 and till the year 1873, defendant R. B. Chapman was the owner in fee-simple of all the lands mentioned in the petition.

It is further admitted that the said County of Webster duly and legally levied and assessed upon the lands aforesaid for the years named the several amounts of taxes set forth in Exhibit A, hereunto annexed and made part of this agreement.

17 It is further admitted that said several assessments of said lands were made by said county to unknown owners. It is further admitted that the said Iowa Homestead Company gave or delivered over to the said county the several amounts of taxes mentioned in said Exhibit A at the several dates therein set forth and took from said county receipts for the sums of money so handed over; that at the time said money was given to said county said Homestead Company did not know or believe that said defendant was the owner of said lands; that said several taxes was so handed over without any actual demand therefor by said county; that said defendant has never paid said taxes to said county or any part thereof, unless the payments made by said Homestead Company constituted a payment for the benefit of the defendant.

It is admitted that said county has always heretofore refused to refund to the Iowa Homestead Company or to said Goodnow the taxes delivered over to said county as aforesaid.

It is further admitted that in the year 1873 said defendant, R. B. Chapman, was, and has been continuously ever since then, a non-resident of the State of Iowa.

It is further admitted that all of said taxes were handed over by said Homestead Company to said county without any previous request from the said defendants and by mistake as to the true ownership of said lands, but in good faith, and under the belief of ownership as alleged in the 1st, 2d, and 3d paragraphs in the petition, and that defendant knew that said taxes were being paid by said company at the time.

These facts are admitted for the purpose of the trial of this suit and nothing else.

Signed this 5th day of April, 1879.

GEORGE CRANE,
Attorney for Plaintiff.
THEO. HAWLEY,
Defendants' Attorney.

18 EXHIBIT A.

Referred to and made part of the agreed statement of facts.

For 1864, paid	Jan.	16th,	1865	$121 82
" 1865, "	Nov.	25th,	1865	133 09
" 1866, "	Feb.	28th,	1867	153 48
" 1867, "	July	1st,	1868	22 50
" 1868, "	April	30th,	1869	103 37
" 1869, "	Feb.	28th,	1870	128 28

Defendant then read in evidence the following agreed statement:

For the purposes of the trial of the above-entitled causes it is hereby stipulated and agreed—

1. That the defendant, R. B. Chapman, is now, and has been since the year 1860, a citizen and resident of the State of New York.

2. That the statute and laws of the State of New York now in force, and which have been in force since 1860, provide that all causes of action based on or arising out of an express or implied promise, not in writing, are barred after the expiration of six years from the date when said causes of action severally accrued.

3. That on the hearing and trial of these causes the defendant may offer and read in evidence from the journal of the proceedings of the board of supervisors of Webster county and the tax lists of said county such portions thereof as he may deem relevant and material, subject to all objections by plaintiff as to their relevancy, materiality, or competency.

4. That the defendant, through his agent, Benj. Grayson, during the years mentioned in the petitions herein, applied yearly to the treasurer of Webster county, Iowa, to pay the taxes levied and assessed upon the land in said petition described, and found
19–26 those mentioned and described in plaintiff's Exhibit A marked paid upon the tax lists for those years respectively.

It is understood that by signing this agreement plaintiff does not waive his right to object to the introduction of the foregoing facts, or any part thereof, on the ground of irrelevancy, incompetency, or that it is too late, the cause having been tried in the supreme court of Iowa.

GEORGE CRANE,
For Plaintiff.
THEO. HAWLEY,
Defendant's Attorney.

[Jumps from page 19–27, though no omissions are made.]

It is hereby stipulated and agreed that the evidence printed on pages 10, 11, 12, and 13 hereof is part of the evidence introduced at the trial of the causes mentioned in the title of this abstract, and was omitted from its proper place and inserted where it is now by mistake of the printer.

GEORGE CRANE,
Att'y for Plaintiff.
THEO. HAWLEY,
Def'ts' Att'y.

27 The plaintiff then read in evidence from the printed transcript of the record in the Supreme Court of the United States in the case of the Iowa Homestead Company against The Des Moines Valley Railroad Company, referred to in said agreed statement of facts, the following portions thereof:

In the District Court of Webster County, Iowa.

IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY, EDWIN C. Litchfield, Electus B. Litchfield, Samuel G. Wolcott, and others, and Roswell B. Burrows.

To said defendants above named:

You are hereby notified that there is now on file in the office of the clerk of the district court of Webster county, Iowa, the petition of plaintiff aforesaid, claiming of you that the said Iowa Homestead Company is in possession and has the legal title to certain lands in the alternate sections within five miles of Des Moines river above the Raccoon Fork. That you claim in some way an adverse title thereto, that you be enjoined from prosecuting actions at law or pre-emptions to said lands to quiet the plaintiff's title, and for other relief. You are also notified that unless you appear thereto and defend before noon of the second day of the term of the said district court of Webster county, to be held on the twelfth day of October, 1868, a default will be entered against you and judgment rendered thereon.

IOWA HOMESTEAD COMPANY,
GRANT & SMITH, *Attorneys.*

DES MOINES, IOWA, 10*th October*, 1868.

28 Accepted service for the defendants, The Des Moines Navigation and Railroad Company and Edwin C. Litchfield and Electus B. Litchfield.

J. BROWN,
Agent for Defendant.

At Chambers, city of Davenport, Scott county, Iowa.

Ordered that a temporary writ of injunction do issue, as prayed, on plaintiff's filing bond in penal sum of $500, conditioned as required by law, and the sureties to be approved by the clerk of Webster county, Iowa, district court.

Dated first day of October term, A. D. 1868.

JOHN F. DILLON,
Chief Justice Supreme Court, Iowa.

THE STATE OF IOWA
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY, SAMUEL G. Wolcott, Wm. B. Wells, Roswell B. Burrows, Edwin C. Litchfield, Wm. McAlpine, Richard B. Chapman, Albert Tracy, Harriet Tracy, Electus B. Litchfield, Edwin Wade, John Stryker, The Des Moines Valley Railroad Company, *et al.*

Whereas the Iowa Homestead Company has filed in our district court for the county of Webster, a petition claiming that the said Homestead Company a corporation created by the laws of Iowa, has the legal title to the lands (which are mentioned and described in plaintiff's petition), and that you or some of you have brought and intend to bring certain actions at law against persons in possession of said land, to divert the title of said Iowa Homestead Company, and that you or some of you are about to prove and claim pre-emptions on some of the lands which are named (in said petition), and has prayed in said bill to grant them title to said lands:

Now, these are to command you and each of you, your agents, attorneys, servants, that you do wholly refrain from prosecuting said actions at law, or either of them, and that you wholly
29 refrain from further applying for or proving up pre-emptions on any of said lands, until the further order of our said district court for the county of Webster. And you will disobey this writ at your peril.

Witness, and in testimony, I, W. Lumpkin, clerk of the district court, have hereunto subscribed my name and affixed the seal of said court, at office in Fort Dodge, this sixth day of October, A. D. 1868.

W. LUMPKIN,
Clerk District Court.

Accepted service of the within writ for the defendants, The Des Moines Navigation and *Homestead* Company, Edwin C. Litchfield and Electus B. Litchfield.

J. BROWN,
Agent of said Defendants.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD CO. *et al.*

In this cause come the defendants, Litchfield and John Stryker, and file their affidavit, bond, and petition for the transfer of this cause in the circuit court of the United States for the district of Iowa under certain acts of Congress of the United States and the court being satisfied that the said affidavit and petition are sufficient under the law, and said bond being approved by the court, it is ordered that this cause be transferred to said circuit court of the United States for the district of Iowa, as to said defendants *in re,* and the clerk of this court is ordered to make the proper papers for said transfer.

30 THE IOWA HOMESTEAD COMPANY

vs.

EDWIN C. LITCHFIELD, ELECTUS B. LITCHFIELD, and JOHN STRYKER, impleaded with Rosswell B. Burrows, The Des Moines Navigation and Railroad Company, and others.

STATE OF IOWA, } *ss*:
Webster County, }

I, John Brown, of Des Moines, in the county of Polk, in said State, being duly sworn, do depose and say that I am the agent of the defendants, Litchfields and Stryker, in the above entitled action, that the same is now pending in the district court of Webster county, Iowa. That the said defendants for whom I am agent as aforesaid are citizens of the State of New York, and that the plaintiff is a citizen of the State of Iowa. That the matter in controversy and dispute between this plaintiff and each and every of the defendants, exceeds the sum of five hundred dollars, exclusive of costs. That I have reason to believe and do believe that from prejudice and local influence said defendants will not be able to obtain justice in the State courts of Iowa, in which this action is pending and untried.

JOHN BROWN.

Subscribed and sworn to by John Brown before me, this 13th day of May, A. D. 1869.

GEORGE B. CORKHILL, *Clerk.*

Know all men by these presents, that we, Edwin C. Litchfield and Electus B. Litchfield and John Stryker, as principals, and John Brown, as surety, are hereby held and firmly bound unto the Iowa Homestead Company in the penal sum of one hundred dollars, lawful money of the United States to the payment of which; well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

31 The condition of this is such, that if the said Edwin C. Litchfield, Electus B. Litchfield, and John Stryker shall enter or cause to be entered in the circuit court of the United States, to be held in and for the district of Iowa, copies of all process, pleadings, depositions, testimony, and other proceedings in a certain suit or action now pending in the district court of the county of Webster and State of Iowa, in which the Iowa Homestead Company is plaintiff, and said Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, impleaded, etc., are defendants, and shall do such other appropriate acts, as by the act of Congress, approved July 27, 1866, entitled An act for the removal of causes in certain cases from State courts, are required to be done upon the removal of a suit in the United States courts, then this obligation to be void, otherwise in full force.

EDWIN C. LITCHFIELD.
ELECTUS B. LITCHFIELD.
JOHN STRYKER.
JOHN BROWN.

Petition for Removal.

To the district court of Webster county, Iowa:

The petition of Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, defendants in the above-entitled action, respectfully shows that they are citizens of the State of New York. That this action is now pending in the district court of Webster county, Iowa. That the matter in dispute herein exceeds the sum of five hundred dollars, exclusive of costs.

And your petitioners further show that they have in this court their affidavit as required by the act of Congress, approved March 2, 1867, entitled "An act to amend an act entitled an act for the removal of causes in certain cases from the State court, approved July 27, 1866."

32 And your petitioners file this petition praying for the removal of this suit into the next circuit court of the United States to be held in and for the district of Iowa, and they herewith offer the surety required by the said above-entitled act.

D. O. FINCH AND J. M. ELLWOOD,
Att'ys for Def'ts Litchfield and Stryker.

This affidavit, bond, and petition are filed in place of the original filed in district court of Webster county 13th October, 1868, the same appearing to be lost and not returned.

GRANT,
For Plaintiff.
J. M. ELLWOOD,
For Litchfield and Stryker.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & R. R. CO. *et al.*

OCT. 16, 1868.

And now, on this day, come the defendants, Crouse, McDermott, and Cotter, by their attorney, G. Parsons, and files a motion to dissolve the injunction, which, coming on to be heard, and the court being fully advised in the premises, said motion is sustained as to them. Whereupon this cause is ordered transferred to the circuit court of the United States as to other defendants.

WEBSTER DISTRICT COURT, *Oct.* 13, 1868.

In this cause the defendants, Litchfield and Stryker, come and file their affidavits, bond, and petition for the transfer of this cause to the circuit court of the United States for the district of Iowa, under certain acts of Congress of the United States, and the court being satisfied that said affidavits and petition are sufficient under said law, and said bond being approved by the court, it is ordered that this cause as to the said defendants be transferred to said circuit court of the United States for the district of Iowa, and the clerk is ordered to make the proper papers for said transfer.

Mr. Clerk: Please make the above entry in this cause, and
33 the further entry that as to other defendants the cause is continued by agreement.

GRANT,
For Plaintiff.

The foregoing original notice, acceptance of service, order of Dillon, justice, writ of injunction, and acceptance of service thereof were read in evidence by plaintiff; also the affidavit of James Grant as to the truth of the matters contained in the petition or bill of complaint in said homestead suit, which was in the words following:

STATE OF IOWA, *Scott County:*

I, James Grant, being duly sworn, depose on oath that I am one of the attorneys for the plaintiff; that the facts stated in the foregoing petition are, all of them, of record, except the allegations of the interest and intent of the parties in the suit of Wolcott *vs.* The Des Moines Navigation Company. I have examined the records referred to in the bill and have been informed as to the facts about the Wolcott suit by parties who appeared to know them, and I believe the allegation of the bill to be true.

JAMES GRANT.

Sworn to and subscribed before me, this 1st day of October, 1868.

JOHN F. DILLON,
Judge Supreme Court, Iowa.

STATE OF IOWA:

Webster County District Court.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & R. R. CO. *et al.*

"The petition of the Iowa Homestead Company shows:

"That said company is a corporation duly created by the
34 laws, and a citizen of the State of Iowa, for the purpose of buying and selling lands in said State; that said plaintiffs, by deed of purchase, bearing date the 12th of November, 1863, acquired, by and through the Dubuque & Sioux City Railroad Company, all the right of said company, the Dubuque and Pacific Railroad Company and the State of Iowa, to about fifty thousand acres of land lying on the east side of the Des Moines river, in Webster and Humboldt counties, Iowa, being the odd sections of land within the limits of the Dubuque & Pacific railroad grant of 1856 and the Des Moines river grant of 1856."

It is admitted that the above described fifty thousand acres of land include and embrace all the lands mentioned and described in the petition of the said E. K. Goodnow in the suit now before this court.

"And by said deed and certificates the plaintiff acquired a title to almost twenty thousand acres of land in odd sections within said

grants, in Webster and Hamilton counties, west of said Des Moines river, a list of which is hereto annexed and made part of this bill. Of these lands the fifty thousand acres lying east of the Des Moines river and claimed by the Des Moines Navigation & Railroad Company, a corporation created by the laws of Iowa, and its assigns, and some title or claim to twenty thousand acres of land on the west side of the river, is, or has been, made by the Des Moines Valley Railroad Company, a corporation created by, and a citizen of, the State of Iowa. * * *

"On the 9th of June, 1854, the State made a contract with the Des Moines Navigation & Railroad Company, a corporation created by the laws of Iowa, to improve the navigation of the river and to convey to said corporation all the remaining lands belonging to the State under the act of 1846." * * *

"After the settlement of the State with the Des Moines Navigation Company, in 1858, the said Navigation Company conveyed
35 certain parcels of the land now claimed by plaintiff to the following persons, among others, Samuel G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Edwin C. Litchfield, W. J. McAlpine, Richard B. Chapman, Albert Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, and John Stryker." * * *

"The said plaintiffs have been in possession of the lands claimed by them, themselves or their vendees, in contract since 1861. They have paid taxes thereon to the State of Iowa since, in all amounting to eighty thousand dollars, and if their title has failed they are entitled to have their taxes refunded since 1861 by the holder of the legal title who has not paid them." * * *

"The plaintiff says he has no adequate remedy for the grievances complained of except in a court of equity. He makes The Des Moines Navigation & Railroad Company, Samuel G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, John Stryker, The Des Moines Valley Railroad Company, Thomas Cotter, Jacob Crouse, John B. McDermott parties defendants to this suit, and prays for a writ of subpœna against them."

"The plaintiff prays that said parties may be enjoined from prosecuting said actions, or any other actions at law in relation to the title or possession of any of said lands, until the final hearing of the bill; that the injunction be made perpetual. That said defendants Cotter, Crouse, and McDermott be enjoined perpetually from prosecuting any pre-emption to any of said lands; that the conflicting acts of the Secretary of the Interior and judicial decisions may be finally interpreted. That the plaintiffs may be quieted in their title and possession to said lands on both sides of the river, or if the plaintiffs' title to said lands is not the better title, and his title to the said lands is the title conveyed by the State, and failed under the right interpretation of the acts of 1846, 1856, and 1862, that his title to an equal number of acres in lieu thereof be decreed and established, that an
36 account be taken of said indemnity lands, and the Des Moines Valley Railroad Company be decreed to make partition

thereof and set apart and convey and relinquish to the plaintiff such lands as the plaintiff may be entitled to under said act of July 12th, 1862."

The State of Iowa being acting trustee to do justice in the premises and to convey to such party as may be established the true beneficiaries under said act. That in the event of a decree that the plaintiffs' present title, or any part of it, has failed, that the said Des Moines Navigation and Railroad Company and its assigns may be decreed to repay to the plaintiff all the taxes which he has paid on said lands and interest thereon. And that said Des Moines Valley Railroad Company be decreed to release to the plaintiffs all claims to the indemnity lands set apart to the plaintiffs, and for such other relief as the nature of the plaintiffs' case may require.

GRANT & SMITH,
Attorneys for Plaintiff.

Comes the plaintiff, October 23d, 1860, and by leave of court and consent of counsel files the following amendment to his bill, to wit:

Circuit Court of the United States, District of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY *et al.*

The plaintiff, by leave of court and agreement of counsel, amends his description of the property in dispute by adding, after the first clause in the bill, the following words:

That said lands in dispute and claimed by the Des Moines Navigation and Railroad Company and its assignees are the odd sections in townships 86, 87, and 88, ranges 27, 28, 29, and 30 west, which lies south of the second correction line, within five miles of the Des Moines river, and townships 89, 90, 91, and 92, ranges 28 and 29, east of the Des Moines river within five miles of the east branch thereof.

The lands to which the Des Moines Valley Railroad Company make some claim are the odd numbered sections in townships 89 and 90, ranges 28 and 29, which lie west of the Des Moines river and within five miles thereof.

GRANT & SMITH.

The amendment, being made to correct and simplify a description of the lands in controversy, is conceded to be true without formal answer.

Part of the answer of Wm. B. Wells, defendant in said suit:

United States Court, District of Iowa.

THE IOWA HOMESTEAD COMPANY, Complainant,
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY, SAMUEL G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Edwin C. Litchfield,

Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus Litchfield, Edward Wade, John Stryker, and others, Defendants.

The several answer of the defendant, Wm. B. Wells, to the bill of complaint of the Iowa Homestead Company, complainant.

* * * And this defendant further answering denies that the title of the complainant to the lands claimed by these defendants and by the Des Moines Navigation and Railroad Company and its grantees is superior and paramount to that of the said com-
38 pany and its grantees, and he expressly denies that the plaintiff, by reason of the matters in said complainant's bill of complaint contained, as against the said Des Moines Navigation and Railroad Company and its grantees, has any title whatever to the said lands claimed by said company and its several grantees respectively.

And this defendant further answering says that, as to whether or not the said complainant and its vendees have been in possession of and paid said taxes on the lands claimed by them since 1861 to the amount of $80,000, this defendant is ignorant and uninformed, save by the said complainant's bill of complaint; but he expressly avers that the possession of the lands by the complainant and its vendees since 1861 is, and has been, unauthorized and wrongful, and that the said complainant should be required to account for the use and rents and profits thereof to the proper owners respectively during the time they have been in such possession; and he also expressly alleges and avers that all taxes whatever paid by said complainant have been paid by complainant voluntarily, with a knowledge of all the facts, and that the complainant is not entitled to have the same, or any part thereof, refunded.

And on this day, to wit, the 2d day of August, 1869, come the defendants, The Des Moines Navigation and Railroad Company, Samuel G. Wolcott, E. C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, and John Stryker, by Ellwood, solicitor, and file in said cause the following answer to complainant's bill of complaint, to wit:

39 United States Circuit Court, District of Iowa. In Equity.

THE IOWA HOMESTEAD COMPANY, Complainant,

vs.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, SAMUEL G. Wolcott, Edwin C. Litchfield, Electus B. Litchfield, William J. McAlpine, Richard B. Chapman, Edward Wade, and John Stryker, Defendants to the bill of complaint of the Iowa Homestead Company, Complainant.

These defendants, The Des Moines Navigation and Railroad Company, Samuel G. Wolcott, Edwin C. Litchfield, Electus B. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Edward Wade, and John Stryker, now and at all times hereafter saving and reserving to them-

selves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or to so much and such parts and portions thereof as these defendants are advised is material for them to make answer unto, answer and say that the foregoing and annexed answer of Wm. B. Wells herein, save as herein otherwise stated and set forth, truly and correctly sets forth all the facts and contains all the averments and allegations relied upon by these defendants, and each and every one of them, as a defense to the said complainant's bill of complaint. That the said answer of said Wells and the admissions and denials and affirmative allegations therein contained are true to the best knowledge and belief of these defendants, and that these defendants adopt the said answer of the said Wells as their answer to the complainant's said bill of complaint, save and except as herein otherwise stated and set forth.

And these defendants, further answering, allege and aver that all the lands in and by the complainant's bill claimed to be in dispute by and between the complainant and these defendants were by the State of Iowa duly granted and conveyed to the said Des Moines Navigation and Railroad Company by the State of Iowa, as in the said answer of the said Wm. B. Wells fully stated and set forth, and that subsequent to such conveyance by the State to said Des Moines Navigation and Railroad Company the said company bargained, sold, granted, and conveyed to these defendants respectively, separate and distinct tracts and parcels of said lands claimed by complainant, as will more fully appear by reference to the deeds or conveyances executed by said company to these defendants respectively, and to which several deeds for greater certainty these defendants pray leave to refer, and that each and every of these defendants is a *bona fide* purchaser under the State of Iowa of the tract or tracts respectively conveyed to him by said company, and that he has full, complete, and indefeasible title thereto.

And these defendants deny that the said complainant is entitled to the relief claimed in his bill of complaint or any part or portion thereof, and aver and insist that by reason of the matters above and in the said answer of Wm. B. Wells, adopted and made a part thereof, contained the title of these defendants to the lands in dispute claimed by them respectively is perfect and absolute.

All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and they pray that their respective titles to the tracts claimed by them respectively may be confirmed and approved and declared valid, and that they be hence dismissed with their costs herein most wrongfully sustained.

FINCH & RIVERS AND J. M. ELLWOOD,
Attorneys for Defendants above named.

And on the 13th day of May, A. D. 1870, there was filed in said cause the following stipulation of parties:

41 United States Circuit Court, District of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY, SAMUEL G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, John Stryker, and others.

It is stipulated and agreed that the joint and several answers of the defendants, Albert H. Tracy, Francis Tracy, and Harriet Tracy, verified by Albert H. Tracy; the several answers of the defendant, Wm B. Wells, sworn to by said Wells, and the joint and several answers of the defendants, Samuel G. Wolcott, Edwin C. Litchfield Wm. J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, John Stryker, and the Des Moines Navigation and Railroad Company, sworn to by Electus B. Litchfield and Nathan J. Higbee be deemed and taken as the answer of the several defendants herein, and that all previous answers of the said defendants, verified by their solicitors and filed herein, be withdrawn from file.

To the several preceding answers the plaintiff filed a formal replication—putting in issue the several averments therein contained.

Stipulations between the Parties.

In the Circuit Court of the United States.

IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES VALLEY RAILROAD COMPANY *et al.*

It is agreed that the only questions submitted on this hearing are:

42 1. In which of the parties is the paramount title to the lands in controversy?

2. If the title shall be adjudged to be in the defendant, The Des Moines Navigation and Railroad Company, is the plaintiff entitled to be reimbursed the taxes which it has paid on the lands?

The amount of taxes paid is admitted to be $2,000. If the court shall find that the plaintiff is entitled to be so reimbursed, the question of the amount to be reimbursed shall be referred to a master, and the defendant shall have the right to show any counter-claims or matters which should be considered as reducing the amount to be reimbursed.

It is admitted that D. W. Kilbourne was a director in the Des Moines Valley Railroad Company from 1862 to 1867. It is admitted

that the Dubuque and Sioux City Railroad was completed to Sioux City July 4th, 1870.

GRANT & SMITH,
Attorneys for Plaintiff.
WITHROW & WRIGHT,
For D. M. N. & R. R. Co.
S. L. STRONG AND
WITHROW & WRIGHT,
For D. M. V. R. R.
C. C. NOURSE,
For R. S. Burrows.

And afterwards, to wit, on the 31st day of May, 1871, the following decree was rendered in said cause by said circuit court:

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY *et al.*

The cause came on to be heard at the May Term, 1871, of
43 said court, Grant & Smith, for the plaintiff, and Ellwood, Nourse & Withrow, for the Des Moines Navigation and Railroad Company and purchasers, and Withrow & Strong, for the Des Moines Valley Railroad Company. And the cause is heard upon the bill and amendments, answers, replications, agreements of counsel, exhibits, and depositions.

And thereupon it was ordered, adjudged, and decreed that the plaintiff's bill as to the lands in townships 86, 87, and 88, ranges 27, 28, 29, and 30, east and west of the Des Moines river and south of the second correction line, and townships 89, 90, 91, and 92, ranges 28 and 29, east of the Des Moines river, and the bill for the relief for indemnity lands in lieu thereof be dismissed.

And the bill for relief as to the lands in townships 89 and 90 north, range 28 and 29 west, on the west side of Des Moines river, be dismissed without prejudice, and that the plaintiffs pay the costs.

The following agreement was filed in said cause by the parties on the 20th day of October, A. D. 1871:

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & R. R. CO. *et al.*

It is agreed between the counsel for the complainants and defendants who have appeared and answered, that the foregoing case was tried in the circuit court upon the bill, amendments, answers, replications, exhibits, and depositions offered by plaintiff and defendant at and in the foregoing record, which the parties agree to examine and correct when printed.

It is further agreed that the plaintiffs have all the title to the property in dispute which lawfully belonged to the Dubuque and Pacific Railroad Company, or Dubuque and Sioux City Railroad Company, its assignee.

And on the 13th day of May, A. D. 1870, there was filed in said cause the following stipulation of parties:

41 United States Circuit Court, District of Iowa.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY, SAMUEL G. WOLCOTT, WM. B. WELLS, ROSWELL S. BURROWS, EDWIN C. LITCHFIELD, WM. J. MCALPINE, RICHARD B. CHAPMAN, ALBERT H. TRACY, HARRIET TRACY, ELECTUS B. LITCHFIELD, EDWARD WADE, JOHN STRYKER, AND OTHERS.

It is stipulated and agreed that the joint and several answers of the defendants, Albert H. Tracy, Francis Tracy, and Harriet Tracy, verified by Albert H. Tracy; the several answers of the defendant, Wm B. Wells, sworn to by said Wells, and the joint and several answers of the defendants, Samuel G. Wolcott, Edwin C. Litchfield Wm. J. McAlpine, Richard B. Chapman, Electus B. Litchfield, Edward Wade, John Stryker, and the Des Moines Navigation and Railroad Company, sworn to by Electus B. Litchfield and Nathan J. Higbee be deemed and taken as the answer of the several defendants herein, and that all previous answers of the said defendants, verified by their solicitors and filed herein, be withdrawn from file.

To the several preceding answers the plaintiff filed a formal replication—putting in issue the several averments therein contained.

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In the Circuit Court of the United States.

IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES VALLEY RAILROAD COMPANY *et al.*

It is agreed that the only questions submitted on this hearing are:

42 1. In which of the parties is the paramount title to the lands in controversy?

2. If the title shall be adjudged to be in the defendant, The Des Moines Navigation and Railroad Company, is the plaintiff entitled to be reimbursed the taxes which it has paid on the lands?

The amount of taxes paid is admitted to be $2,000. If the court shall find that the plaintiff is entitled to be so reimbursed, the question of the amount to be reimbursed shall be referred to a master, and the defendant shall have the right to show any counter-claims or matters which should be considered as reducing the amount to be reimbursed.

It is admitted that D. W. Kilbourne was a director in the Des Moines Valley Railroad Company from 1862 to 1867. It is admitted

that the Dubuque and Sioux City Railroad was completed to Sioux City July 4th, 1870.

GRANT & SMITH,
Attorneys for Plaintiff.
WITHROW & WRIGHT,
For D. M. N. & R. R. Co.
S. L. STRONG AND
WITHROW & WRIGHT,
For D. M. V. R. R.
C. C. NOURSE,
For R. S. Burrows.

And afterwards, to wit, on the 31st day of May, 1871, the following decree was rendered in said cause by said circuit court:

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THE DES MOINES NAVIGATION AND RAILROAD COMPANY *et al.*

The cause came on to be heard at the May Term, 1871, of
43 said court, Grant & Smith, for the plaintiff, and Ellwood, Nourse & Withrow, for the Des Moines Navigation and Railroad Company and purchasers, and Withrow & Strong, for the Des Moines Valley Railroad Company. And the cause is heard upon the bill and amendments, answers, replications, agreements of counsel, exhibits, and depositions.

And thereupon it was ordered, adjudged, and decreed that the plaintiff's bill as to the lands in townships 86, 87, and 88, ranges 27, 28, 29, and 30, east and west of the Des Moines river and south of the second correction line, and townships 89, 90, 91, and 92, ranges 28 and 29, east of the Des Moines river, and the bill for the relief for indemnity lands in lieu thereof be dismissed.

And the bill for relief as to the lands in townships 89 and 90 north, range 28 and 29 west, on the west side of Des Moines river, be dismissed without prejudice, and that the plaintiffs pay the costs.

The following agreement was filed in said cause by the parties on the 20th day of October, A. D. 1871:

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION & R. R. CO. *et al.*

It is agreed between the counsel for the complainants and defendants who have appeared and answered, that the foregoing case was tried in the circuit court upon the bill, amendments, answers, replications, exhibits, and depositions offered by plaintiff and defendant at and in the foregoing record, which the parties agree to examine and correct when printed.

It is further agreed that the plaintiffs have all the title to the property in dispute which lawfully belonged to the Dubuque and Pacific Railroad Company, or Dubuque and Sioux City Railroad Company, its assignee.

44 It is also agreed that either party should be authorized to read, either in the court below or in the Supreme Court, all acts, resolutions, and memorials, journals or public documents of Congress or the State of Iowa, which relate to the matter in controversy, without offering them formally to the court, and use them in argument by proper reference.

It was also agreed that if either has omitted from their record any public record of the State or United States which relates to the matter in controversy, the same may be read and considered in the appeal court by furnishing the adverse party with notice thereof thirty days before the argument, the object of both parties being to obtain a final adjudication of the questions made in the issues between the parties or all the facts which belong to the same.

And it is further stipulated that the defendants, Samuel G. Wolcott, Edwin C. Litchfield, Edward Wade, and John Stryker, each and every of whom are citizens of New York, and the Des Moines Navigation and Railroad Company, duly appeared in this court and filed their joint and several answers to the complainant's bill, duly verified; that the said answers are not now found with the papers in this cause; that the said answers of said defendants were substantially in all respects like those of the defendants, Wm. B. Wells and Albert Tracy, on file herein and duly verified by them respectively, except such changes, variations, and alterations as were necessary to present the interests held by said defendants respectively in the land in controversy in this action.

And it is further stipulated and agreed that the said answer of defendant, Wm. B. Wells, verified by him, with the necessary changes, alterations, and variations, to show and present the proper and respective interest of defendants, Samuel G. Wolcott, Edwin C. Litchfied, Edward Wade, and John Stryker, and the Des
45 Moines Navigation and Railroad Company, shall be taken, treated, and deemed the answer of said last-named defendants herein.

J. M. ELLWOOD,
For all the Defendants Represented.
WITHROW & WRIGHT,
For all the Defendants they represent, except the Des Moines Valley Railroad Company.
GRANT & SMITH,
For Plaintiff.

In the Supreme Court of the United States.

THE IOWA HOMESTEAD COMPANY
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY *et al.*

To prevent unnecessary incumbrance of the record in this cause it is stipulated that the evidence in the court below established the following facts:

That on the 7th day of April, 1863, there was certified to the State

to aid in the construction of the Dubuque and Pacific railroad lands as follows:

	56,573.32 acres.	
	21,061.91½ "	
	1,382.32 "	
		78,917.25
And the 13th December, 1864		159.60

That the land certified on the 27th day of December, 1858, embraced none of the lands in dispute in this controversy and no lands lying in odd numbered sections within five miles of the Des Moines river.

That the lists made on the 7th of April, 1863, and the 13th of December, 1864, embraced the lands in dispute, except in-
46 demnity lands, and all were in odd numbered sections within five miles of the Des Moines river. * * *

(Signed) WITHROW & WRIGHT,
For The Des Moines Navigation and Railroad Company and The Des Moines Valley Railroad Company.
GRANT & SMITH,
For Plaintiff.

And on this day, to wit, the 13th day of May, in the May term, A. D. 1870, of said court, in the records of the proceedings thereof in said entitled cause, there appears the following entry, to wit:

THE IOWA HOMESTEAD COMPANY, Complainant,
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY, SAMUEL G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Edwin C. Litchfield, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, Electus B. Litchfield, Edward Wade, John Stryker, and others, Defendants.

This action was commenced in the district court of Webster county, Iowa, at the October term of said district court. The defendants, Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, filed their affidavits, bond, and petition, asking the removal of this action from said district court to this court, under the provisions of the act of Congress approved March 2d, 1867, entitled An act to amend an act for the removal of causes in certain cases from the State courts, approved July 27, 1866.

And it appearing to said district court that said Edwin C. Litchfield, Electus B. Litchfield, and John Stryker were non-residents of the State of Iowa and residents of the State of New York, and
47 that their application for the removal of this cause to this court is in all respects conformed to the requirements of said act of Congress, the said district court, at the October term thereof, in the year 1868, made the usual order transferring and removing this cause to this court, as to the defendants Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, and this cause as to said defendants removed to this court for trial.

And it appearing that the defendants, Samuel G. Wolcott, Roswell S. Burrows, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, and Edward Wade, are each and every of them now residents of the State of Iowa and district of Iowa, and, under the statute above referred to, are also entitled to a removal of this cause from the State court, and that said defendants, with the express consent and approval of the plaintiff, have appeared and answered the bill herein, and asked to be made parties defendant, and that their rights may be heard and determined in this court and on the trial of this action.

And it further appearing to this court that the defendants so asking to be made parties claim and hold under the same title as the defendants, Edwin C. Litchfield, Electus B. Litchfield, and John Stryker, their defence is in all respects identical, with the said plaintiff consenting, it is ordered that said Samuel G. Wolcott, Wm. B. Wells, Roswell S. Burrows, Wm. J. McAlpine, Richard B. Chapman, Albert H. Tracy, Francis W. Tracy, Harriet Tracy, and Edward Wade, and each and every of them, be made parties defendants herein; that the answer filed by said persons be taken and deemed their answer to the complainants' bill, and that by their appearance and answer herein the said persons be deemed and treated as defendants herein, and their rights in the premises adjudicated in and by this court in this action.

The defendant then read the following portions of said record

48 *Notice Respecting Certain Lands in the State of Iowa.*

Notice is hereby given that the lands along the Des Moines river, in Iowa, and within the within claimed limits of the Des Moines grant in that State, above the mouth of the Raccoon Fork of said river, which have been reserved from sale heretofore on the account of the claim of the State thereto, will continue reserved, for the time being, from sale or from location by any species of script or warrant, notwithstanding the recent decision of the Supreme Court against the claim.

This action is deemed necessary to afford time for Congress to consider, upon memorial or otherwise, the case of actual *bona fide* settlers holding under titles from the State, and to make such provision, by confirmation or adjustment, of the claims of such settlers as may appear to be right and proper.

JOS. S. WILSON,
Commissioner of the General Land Office.

General Land Office, May 18th, 1860.

Such notice was at once posted in a conspicuous place in said land offices in Iowa, and so remained posted until the close of the year 1863.

On the 25th May, 1860, Wm. T. Steiger, an agent in behalf of the Dubuque & Pacific Railroad Company, filed in the General Land Office a list of lands laying within the claimed limits of the Des

Moines river grant above the Raccoon Fork, and claimed to select some of them for said railroad company, under the act of 15th May, 1856, granting lands to Iowa for railroad purposes.

The Commissioner of the General Land Office, in June, 1860, acknowledged the receipt of the list, and added:

"The tracts in said list are above the Raccoon Fork, and within the lands that had been selected under the Des Moines river grant, by act of 8th of August, 1846; and in view of the recent decision of the Supreme Court affecting the title to lands under that
49 grant above the Fork, the present lists are presented by you.

As the matter has been placed in train for Congressional intervention, no action can be taken in the matter presented by you until Congress shall have had time to consider and dispose of the subject.

"Respectfully, your obedient servant,

"JOS. S. WILSON,
"*Commissioner.*"

On the 7th July, 1860, the commissioner of the Land Office, in an official letter to the Secretary of the Interior in relation to the same subject, said:

"Without passing upon, or, in fact, considering the question as to the right of the State under the railroad grant to these lands, which, at this date of the grant had been withdrawn from sale or location, the fact that Congress has taken incipient action in the matter, of itself justifies us in not recommending further proceedings by the Department until after the close of the next session of Congress.

"Respectfully, your obedient servant,

"JOS. S. WILSON,
"*Commissioner.*"

On the 6th September, 1860, the Secretary of the Interior addressed the following letter to the Commissioner of the General Land Office:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *Sept. 6th*, 1860.

SIR: In the absence of any direct application by the Governor of the State of Iowa, for final action in the certification of certain lands common to the claimed limits of the grant to that State for the improvement of the Des Moines river and the grants for aid in constructing railroads; my opinion is that it will be proper, as you suggest, to delay action until after the close of the next session of Congress.

50 The papers enclosed with your letter of the 7th July last and 3d, instant, are now returned.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

THE COMMISSIONER OF THE GENERAL LAND OFFICE,
WASHINGTON, *June 1st*, 1860.

Hon. JOSEPH S. WILSON,
Commis'r Gen'l Land Office.

SIR: Having been informed that the resolution introduced in the Senate by the Hon. Mr. Grimes, of Iowa, for confirming sales made by the State of certain lands on and near the Des Moines river and for other purposes, S. R. No. 37, has just been referred by the Committee on Public Lands of the Senate to the Secretary of the Interior for his views, and is now before you for report—

I respectfully ask, in behalf of the railroad companies, that the enclosed printed copy of the decision of the Supreme Court referred to in the resolution may be communicated to the committee; also, that the companies may have the benefit of the facts, that the lands in question were by agreement, in adjusting the railroad grants at your office, placed in suspension, to await the decision of the courts, and that since the decision of the Supreme Court was rendered, they have been claimed and selected for the railroads, and particular lists and maps thereof, filed by me as their agent, in the General Land Office.

I am, very respectfully, your obedient servant,
WM. T. STEIGER, *Agent*, &c.

Notice Continuing Reservation of the Lands from Sale, May 18th, 1860.

Notice respecting certain lands in the State of Iowa.

Notice is hereby given that the lands along the Des Moines
51 river, in Iowa, and within the claimed limits of the Des Moines grant in that State, above the mouth of the Raccoon Forks of said river, which have been reserved from sale heretofore on account of the claim of the State thereto, will continue reserved, for the time being, from sale or from location, by any species of scrip or warrants, notwithstanding the recent decision of the Supreme Court against the claim.

This action is deemed necessary to afford time for Congress to consider, upon memorial or otherwise, the case of actual *bona fide* settlers, holding under titles from the State, and to make such provision, by confirmation or adjustment of the claims of such settlers, as may appear to be right and proper.

JOS. S. WILSON,
Commissioner of the General Land Office.

General Land Office, May 18, 1860.

Steiger, Agent, &c., to Commissioner Wilson, May 25th, 1860.

WASHINGTON, May 25th, 1860.

Hon. JOSEPH S. WILSON,
Comm'r General Land Office.

SIR: Referring to the recent decision of the Supreme Court of the United States on the Des Moines river improvement claim, I herewith transmit a list, marked C, of my selections of this date for and

on account of the Dubuque & Pacific railroad and branch, under the act of 15th May, 1856, of the interfering lands in the Fort Dodge district, Iowa, within the six and the fifteen mile limits of said railroad grant heretofore held in suspension in our adjustment.

This list discriminates the lands conditionally approved for the river grant, from those not yet approved in any list, and embraces as follows:

52	Whole quantity 6-mile limits	59,418.22 acres
	15-miles "	73,729.35 "
	Total	133,606.57

Of which the quantity not yet approved, all west of the river, is as follows:

Not approved 6-mile limits	15,456.47
15-miles "	16,214.12
Total	31,664.59

I also enclose a connected diagram, marked D, showing by the pink and yellow shades thereon the lands hereby selected.

Please acknowledge the receipt hereof.

Very respectfully, your ob'd't serv't,

WM. T. STEIGER, *Ag't, &c.*

Commissioner Wilson to Steiger, Ag't, &c., June 12, 1860.

GENERAL LAND OFFICE, *June* 12, 1860.

W. T. STEIGER, Esq., *Washington, D. C.*

SIR: I have to acknowledge the receipt of your letter of the 25th ult., enclosing lists and maps of lands selected and claimed under the railroad grant to Iowa, by act of May 15th, 1856, for the Dubuque and Pacific railroad.

The tracts in said lists are above the Raccoon Fork, and within the lands that have been selected under the Des Moines river grant, by act of 1846, and in view of the recent decision of the Supreme Court, affecting a title to lands under the grant above the said fork, the present lists are handed in by you.

As the matter has been placed in train for Congressional intervention, no action can be taken in the matter presented to
58 you until Congress shall have time to consider and dispose of the subject.

Very respectfully, your obedient servant,

JOS. S. WILSON,
Commissioner.

Commissioner Wilson to Secretary Thompson, July 7th, 1860.

HON. J. THOMPSON, *Sec. of Interior.*

SIR: I have the honor to return herewith the letter dated 26th ultimo, from W. T. Steiger, agent, &c., asking that certain lands selected and claimed under the railroad grant act to Iowa, of May

15th, 1856, may, without further delay, be certified to the State, and, pursuant to reference, respectfully submit that the lands referred to are embraced in certain lists filed in this office, during the past month, in view of the recent decision of the Supreme Court, affecting a title to lands under the Des Moines river grant of 1846, above the Raccoon Fork. The tracts in said lists are above the Raccoon Fork, and within the lands that have been selected under the above-mentioned river grant.

Upon the receipt of these lists, Mr. Steiger was advised that, as the matter had been placed in train for Congressional intervention, no action could be taken by this office until Congress should have had time to consider and dispose of the subject.

Without passing upon or in fact considering the question as to the right of the State under the railroad grant to these lands, which, at the date of that grant, had been withdrawn from sale or location, the fact that Congress had taken incipient action in the matter, of itself justifies us in not recommending further proceedings by the Department until after the close of the next session of Congress.

Very respectfully, your obedient servant,

JOS. S. WILSON,
Commissioner.

54 *Secretary Thompson to Senator Jones, Nov. 3d, 1860.*

Extract from a letter dated—

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *Nov. 3d*, 1860.

SIR: I have the honor to acknowledge the receipt of your letter of this date, and have considered the same in connection with the letter of Mr. Steiger, agent of the Dubuque and Sioux City Railroad Company, of the 1st instant, both relating *the* to the certification to the State of Iowa of lists of odd-numbered sections of land within the six and fifteen-mile limits of the railroad "from the city of Dubuque to a point on the Missouri river near to Sioux City."

For your information I herewith enclose copies of my letters of the 6th September last to the Commissioner of the General Land Office, and of the first of October to Mr. Steiger, and in reply to your letter would state that, as respects those tracts within the limits of the railroad grant which have already been certified to the State of Iowa by my predecessor, under the previous grant of 8th of August, 1846, in the absence of a formal and sufficient surrender by the State of all claims under the prior grant I deem it proper to suspend action at present so far as the claims interfere. The subject of these opposing claims is involved with proposed legislation pending in Congress; and the State authorities still assert the equity of the title which has been recognized by my predecessors, though since *b*eclared to be invalid by a decision of the Supreme Court of the United States.

* * * * * *

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. Geo. W. Jones, of Iowa, present.

55 *Secretary Thompson to Governor Kirkwood, Nov. 3rd, 1860.*

Extract from a letter dated—

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *November 3d*, 1860.

His Excellency S. J. KIRKWOOD,
Governor, &c., Des Moines, Iowa:

* * * * * * *

Again I would remark that so far as any proposition for congressional aid in behalf — the State was brought to the notice of this department during the last session of Congress, it was confined, as I understood it, to that portion of the claimed lands which have been heretofore certified by my predecessors, and which has not been included in the lists of lands ordered into market. In respect to this class of lands, I had the honor, in a communication of the 11th June last, addressed to Hon. R. W. Johnson, chairman of the Committee Public Lands of the United States Senate, to recommend the report to that body, for adoption by Congress, the form of a joint resolution, as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the title which the United States still retain in the tracts of land along the Des Moines river, and above the Raccoon Forks thereof, in the State of Iowa, which has been heretofore certified to said State improperly by the Department of the Interior as part of the grant by act of Congress approved August 8th, 1846, be, and the same is hereby, relinquished to the State of Iowa."

You thus perceive that, so far as my predecessors have acted under the grant of August 8th, 1846, I was willing to recommend a confirmation of that action by Congress. I cannot, however, go further.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

56 *Joint Resolution to Quiet Title to Lands in the State of Iowa, approved March 2d*, 1861. (12 *Stat. at Large, p.* 251.)

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the title which the United States still retain in the tracts of land along the Des Moines river, and above the mouth of the Raccoon Forks thereof, in the State of Iowa, which have been certified to said State improperly by the Department of the Interior as part of the grant by act of Congress, approved August 8th, 1846, and which in now held by *bona fide* purchasers under the State of Iowa, be, and the same is hereby, relinquished to the State of Iowa.

Approved March 2nd, 1861.

Pleas in the circuit court of the United States for the southern district of New York, held at the United States circuit court rooms, in the city of New York, in said district, of the term of April, in the year of our Lord one thousand eight hundred and sixty-five.

Witness the Honorable Samuel Nelson, Justice of the Supreme Court of the United States.

KENNETH G. WHITE, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The Des Moines Navigation & Railroad Company, being a corporation created by and under the laws of the State of Iowa, and organized and residing in said State of Iowa, were summoned to answer Samuel G. Wolcott, a citizen of said State of New York, of a plea of breach of covenant; and thereupon the said Samuel G. Wolcott, plaintiff, by Jasper W. Gilbert, his attorney, complains of the said The Des Moines Navigation & Railroad Company, defendants, of a plea of breach of covenant, for that whereas, heretofore, to wit, on the eighth day of August,
57 in the year of our Lord one thousand eight hundred and fifty-nine, at Des Moines, in the said State of Iowa, to wit, at the city of New York, in the said southern district of New York, by a certain deed-poll then and there made by the said defendants, which said deed-poll, sealed with the seal of the said defendants, the plaintiff now brings into court here, the date whereof is the day and year aforesaid, it was witnessed that the said defendants, in consideration of the sum of three thousand and forty dollars, to them in hand paid by the said plaintiff, did thereby grant and convey to the said plaintiff the following tract of land in said State of Iowa, to wit, in Webster county: The east half of section seventeen, in township eighty-eight, range twenty-seven, containing three hundred and twenty acres; and the said defendants, in and by the said deed-poll, then and there, in consideration of the moneys aforesaid, did warrant the title of said land against all persons whomsoever, and did thereby covenant to and with the said plaintiff that the said defendants then had, and that the said plaintiff, by reason of the said deed-poll, did and would receive and take, a good and perfect title in fee to the said tract of land, as by the said deed-poll, reference being thereto had, will more fully and at large appear; yet the said plaintiff, in fact, saith that the said defendants then and there had no title whatever to the said tract of land, nor any part thereof, and that the said plaintiff did not then or there or at any time afterwards, by reason of the said deed-poll or otherwise, receive, obtain, or take any title whatsoever to the said tract of land, or any part thereof, but that the said defendants, to fulfill their said warranty of the title to said land, and to cause the said plaintiff to receive, obtain, or take a good and perfect title in fee to the said tract of land, although often requested so to do by the said plaintiff, have hitherto wholly neglected and refused, and still do neglect and refuse, of all of which the said defendants had notice; and so the said plaintiff in fact saith that the said defendants, although often requested, etc., have not kept the said covenants so by them
58 made as aforesaid, but have broken the same, to the damage of said plaintiff of ten thousand dollars; and thereof the said plaintiff brings his suit, etc.

And the said defendants, by W. & C. Tracy and Tallmadge, their

attorneys, come and defend the wrong and injury when, etc.; and as to the supposed breach of covenant above assigned and alleged by the said plaintiff, they, the said defendants, say that the plaintiff ought not to have or maintain his aforesaid action thereof against them, the said defendants, because they say that they, the said defendants, before and at the time of the making of the said indenture in the said plaintiff's declaration above mentioned, were seized in fee of the said tract of land, and did then and there, by the said indenture, convey to the said plaintiff a good and perfect title in fee to the same; and this the said defendants are ready to verify. Wherefore the said defendants pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c. And for a further plea in this behalf the said defendants, by leave of the court here for the purpose first had and obtained, according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the said defendants, after the making of the said indenture in the said declaration mentioned, and before the commencement of this suit, to wit, on the first day of August, 1862, acquired and took a title and estate in fee in the said tract of land, which said last-mentioned title and estate, by the common law of the State of Iowa, and also by the statute of the State of Iowa, did forthwith enure to and vest in the said plaintiff, as the grantee of the said defendants, by the said indenture; and by means of the premises the said plaintiff, before the commencement of this suit, did receive and take good and perfect title in fee to the said tract of land, of all which the said plaintiff had notice, without this, that the said plaintiff has suffered any damage by means of anything in the said declarations mentioned; and this the said defendants are ready to verify.

59 Wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

And the plaintiff, by his attorney aforesaid, as to the said plea of the said defendants by them first above pleaded, says that he, the said plaintiff, ought not, by reason of anything in that plea alleged, to be barred from having or maintaining his aforesaid action, because he says that the said defendants, at the said time when, &c., were not seized in fee of the said tract of land, nor did they convey to plaintiff any title thereto in any manner and form as in that plea in that behalf alleged; and this the said plaintiff prays may be inquired of by the country, &c.

And the said defendants do the like.

And the plaintiff, by his attorney aforesaid, as to the said plea of the said defendants by them secondly above pleaded, says that he, the said plaintiff, ought not, by reason of anything in that plea alleged, to be barred from having or maintaining his aforesaid action thereof, because he says that the said defendants did not, at the said time when, &c., acquire or take any title or estate, nor did such supposed title or estate vest in the said plaintiff, nor did the plaintiff receive or take any title whatever in manner and form as in that

plea alleged; and this the said plaintiff [prays] may be inquired of by the country, &c.

And the said defendants do the like.

Therefore it is ordered that the issues above joined be tried at the next term of the said circuit court, to be held at the court-rooms in said district above mentioned, commencing on the 3d Monday of October next, the same day as given to the parties aforesaid.

Afterwards, to wit, on the 27th day of October, in the term of October, in the year of our Lord one thousand eight hundred and sixty-five, in the said circuit court, at the court-room thereof, in the city of New York, in said southern district of New York, before the Hon. Samuel Nelson, a justice of the Supreme Court of the United States, come to the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury, being summoned, also came, who, to speak the truth in the matter aforesaid in issue, being chosen, tried, and sworn, say upon their oaths that the defense by the said defendants above pleaded is true; and they find and return a general verdict in favor of the defendants aforesaid.

60

"Therefore, it is considered by the court here that the said plaintiff take nothing by his said action, but that he be in mercy, etc., and that the said defendants go thereof without day, etc. And it is further considered that the said defendants recover against the plaintiff the sum of twenty-seven dollars and thirty cents for their costs and charges in and about their defence in this behalf expended, and that the said defendants have execution thereof."

Judgment signed this 31st day of October, A. D. 1865.

R. E. STILLWELL,
Deputy Clerk.

In the Circuit Court of the United States for the Southern District of New York.

CALVIN BURR
ag'st
THE DES MOINES NAVIGATION AND RAILROAD COMPANY.

CITY AND COUNTY OF NEW YORK, *ss:*

Calvin Burr, a citizen of the State of New York, complains of the Des Moines Navigation and Railroad Company, being a corporation created by and under the laws of the State of Iowa, and organized and residing in said State of Iowa, and being in custody, &c., of a plea of breach of covenant, for that whereas, heretofore, to wit, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and fifty eight, to wit, at Des Moines, in said State of Iowa, by a certain deed-poll there and then made by the defendants, which said deed-poll, sealed with the seal of said defendants, the plaintiff now brings into court here, the date whereof is the day and year aforesaid, it was witnessed that the said defendants, in consideration of the sum of seventeen thousand eight hundred and sixty-eight dollars and eighty cents, to them in

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hand paid by the said plaintiff, did thereby grant and convey to the said plaintiff the following tracts of land in said State of Iowa, to wit: All of section nine, in township eighty-nine, range twenty-eight, and all of section twenty-one, in township eighty-nine, range twenty-eight, containing together twelve hundred and eighty acres; and the said defendants, in and by the said deed-poll, there and then, in consideration aforesaid, did warrant the title of said land against all persons whomsoever, and did thereby covenant to and with the plaintiff that the said defendants then had, and that the said plaintiff, by reason of the said deed-poll, did and would receive and take a good and perfect title in fee to the said tracts of land, and each thereof, as by the said deed-poll, reference being thereto had, will more fully and at large appear; yet the said plaintiff in fact saith that the said defendants then and there had no title whatever to the said tracts of land, or either thereof, nor any part thereof, and that the plaintiffs did not then or there, or at any time afterward, by reason of the said deed-poll, or otherwise, receive, obtain, or take any title whatsoever to the said tracts of land or either thereof, but that the said defendants, to fulfill their said warranty of the title to said lands, and to cause the said plaintiff to receive, obtain, or take a good and perfect title in fee to the said tract of land, although often requested so to do by the said plaintiff, have hitherto wholly neglected, and still do neglect and refuse. Of all which the said defendants had notice, and so the said plaintiff in fact saith that the said defendants, although often requested to, have not kept the said covenants so by them made as aforesaid,
62 but have broken the same, to the damage of the said plaintiff, thirty thousand dollars; and thereof the said plaintiff brings his suit, &c.

J. W. GILBERT,
Attorney for Plaintiff.

And the said defendants, by Tracy & Olmsted, their attorneys, come and defend the wrongs and injury, when, &c.; and as to the supposed breach of covenant above assigned and alleged by said plaintiff, then the said defendants say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, the said defendants, because they say that they, the said defendants, before and after the time of making of the said indenture in said plaintiff's declaration above mentioned, were seized in fee of the said tracts of land, and did then and there, by the said indenture, convey to the said plaintiff a good and perfect title in fee to the same; and this the said defendants are ready to verify. Wherefore the said defendants pray judgment if the said plaintiff ought to have or maintain his aforesaid action against them, &c.

And, for a further plea in this behalf, the said defendants, by leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the said defendants, after

making the said indenture in the said declaration mentioned, and before the commencement of this suit, to wit, on the first day of August, 1862, acquired and took a title and estate in fee in the said tracts of land, which last-mentioned title and estate, by the common law of the State of Iowa, and also by the statutes of the said State of Iowa, did forthwith enure to and vest in the said plaintiff, as the grantee of the said defendants by the said indenture, and that by means of the premises the said plaintiff, before the commencement of this suit, did receive and take a good and per-
63 fect title in fee to the said tracts of land, of all which the said plaintiff had notice, without this, that the said plaintiff suffered any damage by means of anything in the said declaration mentioned; and this the said defendants are ready to verify. Wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

United States Circuit Court, Southern Dist. of New York.

CALVIN BURR
ag't
THE DES MOINES NAVIGATION & RAILROAD COMPANY.

And the plaintiff, by his attorney aforesaid, as to the said plea of the said defendants by them first above pleaded, says that he, said plaintiff, ought not, by reason of anything in that plea alleged, to be bound from maintaining his aforesaid action, because he says that the said defendants, at the said time, when, etc., were not seized in fee of the said tracts of land, nor did they convey to the said plaintiff any title thereto in manner and form as in that plea in that belief alleged; and this the said plaintiff prays may be enquired of by the country, etc. And the said defendants do the like.

And the said plaintiff, by his attorney aforesaid, as to the said plea of the said defendants by them secondly above pleaded, says that, in the said plaintiff, or not, by reason of anything in that plea alleged, to be bound from having or maintaining his aforesaid action thereof, because, he says, that the said defendants did not, at the said time, when, &c., acquire or take any title or estate, nor did such supposed title or estate vest in the said plaintiff, nor did the plaintiff receive or take any title whatsoever in manner and form as in that plea alleged; and this the said plaintiff pray- may be enquired of by the country, etc. And the said defendants do the like.

J. W. GILBERT,
Plaintiff's Attorney.

64 Therefore the issues above joined are ordered by the circuit court of the United States for the southern district of New York, to be tried at a stated term of said court, appointed to be held at the city hall, of the city of New York, on the — day of —, in the year of our Lord one thousand eight hundred and sixty-four, and place last above named, before Hon. — Shipman, one of the justices of said court, according to the form of the statute in said case made and provided.

Came as well the above-named plaintiff as the above-named defendant, by their respective attorneys above mentioned; and the jurors of the jury summoned to try the said issue being called also came, who, to speak the truth of the matters aforesaid, being chosen, tried, and sworn, say, upon their oath, that the said defendant is guilty of the several breaches of covenant above laid to its charge, in manner and form as the said defendant hath above in that behalf alleged against the said defendant; and the said jury assess the damages of the said plaintiff, by reason of the premises, over and above his costs and charges by him in above his in this behalf expended to the sum of twenty-four thousand two hundred and fifty-five $\frac{76}{100}$ dollars, and for these costs and charges to six cents.

Therefore, it is considered that the said plaintiff do recover against the said defendant his said damages, costs, and charges by the jurors aforesaid, in form aforesaid assessed, and also thirty-eight and $\frac{35}{100}$ dollars for his costs and charges by the said court now here adjudged of increase to said plaintiff, and with his assent, which said damages, costs, and charges, in the whole, amount to twenty-four thousand two hundred and ninety-four and $\frac{11}{100}$ dollars.

And the said defendants in mercy, etc.

Judgment signed this 21st November, 1864.

R. E. STILLWELL,
Deputy Clerk.

65 The court then delivered to the jury the following charge:

Gentlemen of the jury: You will see that the conclusions to which I have come upon the questions raised by the evidence in this case dispose of all except one, and that relative to the damages only, which I will submit to you. I therefore charge you—

1. That no title to the lands in question passed to the Territory of Iowa by virtue of the act of Congress, August 8th, 1846, these lands lying above the Raccoon Forks of the Des Moines river. This point has been already settled by the Supreme Court of the United States in the case of the Dubuque and Pacific Railroad Company *vs.* Litchfield, 23 of How. Rep., 66.

2. That none of the acts of the executive officers of the United States which have been proven, nor all of them taken together, had any effect to extend the operation of the act of August 8th, 1846, over these lands, nor in any manner to confer a title to them, either at law, or, strictly speaking, in equity upon the territory or State of Iowa, or upon these defendants. This result follows from the decision of the Supreme Court already cited.

3. That these acts of the executive officers of the United States, proven and relied on in this case, did not reserve to the United States these lands for the purpose of aiding in any other objects or internal improvements, or for any other purpose whatever, and therefore they are not drawn within the proviso of the act of May 15th, 1856. Those of them which proceeded upon the idea that these lands were embraced in the grant of August 8th, 1846, were mere errors arising out of a misconstruction of the terms of that grant. They were, no doubt, made in good faith and for the pur-

pose of formally fixing and defining rights supposed to have been already granted by Congress. But as these acts, according
66 to the case, 23d How., 66, exceeded the grant made by Congress they were void. These acts were intended as acts of transfer and not acts of reservation. To now attribute to them the effect of having reserved these lands to the United States—that is, set them apart for the use of the Government itself—would be reserving the natural consequences originally intended to flow from them. Such a construction of these acts, I think, would be arbitrary, and neither warranted by any circumstances presented by the evidence or by the settled rules of law. All these acts, therefore, left the lands in question in the same status in which they have always remained. That status was unchanged, not only in fact, but in contemplation of law. The lands were neither sold, granted, nor reserved to the United States for any purpose, but remained in the great body of the public domain, subject to the control of Congress and to the operation of the laws in force regulating the disposition of the public lands.

4. If these views are correct, then the lands in question were embraced in the body of the act of May 15th, 1856, and the title passed by that grant to the State of Iowa in trust. The State took the lands in trust, and by an express provision of the act they were "to be applied to no other purpose whatever" than that of aiding in the construction of certain railroads therein named. It is unnecessary to say that the defendants' enterprise is not one of those named in the act as those to which the application of the lands granted is expressly restricted. Whether or not a title *in presenti* passed to the State on the passage of this act I do not deem it necessary now to determine; but I think it is quite certain that that act placed these lands in such a position that they were not reached by the resolutions of Congress of March 2d, 1861, and July 12th, 1862, upon which the defendants rely. To conclude otherwise would be to hold that these joint resolutions repeal *pro tanto*, without any express provisions—by implication merely—the public act of May 15th, 1856. A construction by which the repeal of a statute by
67 implication is sought to be established is never favored, especially where private rights are concerned.

5. These views, being legal conclusions drawn from facts conceded in the case or established by uncontradicted evidence, cover the whole controversy, except the question of damages. It is my duty, therefore, to direct you to find a verdict for the plaintiff and assess the damages which he has proven he has suffered from the failure of his title to these lands. The rule by which you will be guided will be the amount of the consideration paid, with interest from the day of payment to the present time at the rate of six per cent. per annum.

The defendants' counsel excepted to that part of the charge concerning the effect of the act of August 8th, 1846, contained in the second proposition or section of said charge, and also excepted to that part of the charge contained in the third proposition or section

thereof, and also excepted to that part of the charge contained in the fourth proposition or section thereof, and also to that part of the charge contained in the fifth proposition or section thereof.

The court thereupon charged and instructed the jury to find a verdict for the plaintiff; to which charge and instructions the defendants' counsel excepted.

The jury found a verdict in favor of the plaintiff, and assessed his damages at $24,254.00.

And because the said several exceptions do not appear by the record of the said trial, the said presiding judge, on the prayer of the defendants, has set to this bill of exceptions his seal, the third day of November, one thousand eight hundred and sixty-four.

WILLIAM D. SHIPMAN. [L. S.]

Filed Nov. 21st, 1864.

Bond for cost.

Docket Entries and Extracts from Minutes Supreme Court of
68 *the United States in Samuel G. Wolcott, Plaintiff in Error, vs. The Des Moines Navigation and Railroad Company.*

Supreme Court of the United States. December Term, 1864.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, Plaintiff in Error, *vs.* CALVIN BURR. } No. 336.

In error to the circuit court of the United States for the southern district of New York.

Chas. Tracy, P. Smith, for intervenor.

Docket Entries.

1864.
Dec. 10. Record received and filed.

No. 221. December term, 1865. Docket entries continued.

1866.
Feb. 8. Motion of Mr. Allison for leave to intervene filed.
Feb. 8. Affidavit of J. M. McKinley filed.
" 13. Leave granted to the Dubuque & Sioux City R. R. Co. to intervene, &c.
" 21. Brief of P. Smith, for intervenor, filed.

No. 133 of December term, 1869. Docket entries continued.

1866.
Dec. 14. Mr. J. F. Duncombe filed a motion to intervene, &c.
" 17. Leave granted Mr. Duncombe to appear and file printed argument.
" 17. No. 204 to be argued with this case.
1867.
Feb. 8. Submitted with No. 204.
May 13. Reversed with costs and a venire awarded.

Supreme Court of the United States. Dec. Term, 1865.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, Plaintiff in Error,
vs.
CALVIN BURR.

69 *Extracts from Minutes.*

* * * * * * *

On consideration of the motion made and affidavit filed in this cause, on the 8th instant, it is now here ordered by the court that leave be, and the same is hereby, granted counsel of the Dubuque and Sioux City Railroad Company to appear and be heard on the argument when this cause is reached.

13 February, 1866.

No. 133 of December Term, 1866.

* * * * * *

THE DES MOINES NAVIGATION AND R. R. Co., Pl'ff in Error,
vs.
CALVIN BURR.

On consideration of the motion of Mr. Duncombe for leave to intervene, &c., in this case, it is now hereby ordered by this court that leave be, and the same is hereby, granted Mr. Duncombe to intervene in behalf of the Iowa Homestead Company in the argument of this cause, and to file a printed argument.

17 December, 1866.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, Plaintiff in Error,
vs.
CALVIN BURR.

Ordered by the court that No. 204, Samuel G. Wolcott, pl'ff in error, *vs.* Des Moines Navigation & R. R. Co., be argued by counsel, if desired, with No. 133, when reached in the regular call of the docket.

17 December, 1866.

70 THE DES MOINES NAVIGATION & RAILROAD COMPANY, Plaintiff in Error,
vs.
CALVIN BURR. } No. 133.

This cause was submitted to the court on the record and printed argument by Mr. Smith, of counsel for intervenors, and stipulation of counsel filed to be considered with No. 204, submitted on printed arguments at the last term of this court.

8 February, 1867.

Supreme Court of the United States, December Term, 1866.

THE DES MOINES NAVIGATION & RAILROAD COMPANY, Plaintiff in Error, *vs.* CALVIN BURR. } No. 133.

In error to the circuit court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of the record from the circuit court of the United States, for the southern district of New York, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of said circuit court in this cause be, and the same is hereby, reversed, with costs; and that this cause be, and the same is hereby, remanded to the said circuit court with directions to award a *venire facias de novo*.

Per Mr. JUSTICE NELSON.

Mr. Justice Miller took no part in the decision of this case.

True copies of docket entries, extract from minutes, and judgments.

[SEAL.] Test: D. W. MIDDLETON,
Clerk Supreme Court U. S.

71 Supreme Court of the United States. December Term, 1866.

THE DES MOINES NAVIGATION & RAILROAD COMPANY, Plaintiff in Error, *vs.* CALVIN BURR. } No. 221.

In error to the circuit court of the United States for the southern district of New York.

The Dubuque & Sioux City R. R. Company, a corporation, etc., by Wm. B. Allison, its attorney, now comes and moves the court for leave to intervene in the above-entitled cause, and also for leave to file an argument in same for reasons set forth in affidavit filed herewith, and made a part hereof.

DUBUQUE AND SIOUX CITY RAILROAD COMPANY,
By WM. B. ALLISON, *Its Attorney.*

True copy.

[L. S.] Test: D. W. MIDDLETON,
Clerk Supreme Court U. S.

Supreme Court of the United States. December Term, 1865.

THE DES MOINES NAVIGATION AND RAILROAD COMPANY, Plaintiff in Error, *vs.* CALVIN BURR. } No. 221.

In error to the circuit court of the United States for the southern district of New York.

I, James McKinley, on oath, say that I am an attorney and counsellor-at-law, and am assistant attorney of the Dubuque & Sioux City Railroad Company; that within the past few days, and not before, I have had an opportunity to examine the record in the case above named; that the said railroad company are materially interested in obtaining a correct decision of the principal point raised in said cause, and that I verily believe a decision of the point
72 against the above-named defendant in error would prejudice the interest of said Dubuque and Sioux City Railroad Company, although not a party to the record in the above-named case. The decision made by the court below (Hon. Wm. D. Shipman) is the point on which rests the title to above seventy-seven thousand acres of land granted by Congress to aid in the construction of said Dubuque and Sioux City railroad. Further, that I have reason to fear that said Burr is not a *bona fide* litigant, but, on the contrary, is desirous of obtaining a decision against himself, with a view to prejudicing the title of the Dubuque and Sioux City Railroad Company, and their grantees.

Signature to the foregoing affidavit.

(Signed) JAMES M. McKINLEY.

Subscribed and sworn to before me, the clerk of the district court of Dubuque county, Iowa, this 1st day of February, 1866.

Witness my hand and official seal.

[SEAL.] (Signed) M. LEPPER, *Clerk.*

True copy.

[SEAL.] Test: D. W. MIDDLETON, *Clerk Sup. Court U. S.*

(Endorsed as follows:) The Des Moines Navigation & Railroad Company, plaintiff in error, *vs.* Calvin Burr. Affidavit of James M. McKinley. Filed Feb., 1866. George B. Corkhill, clerk.

Motion on behalf of the Iowa Homestead Company and their Grantees to Intervene for the purpose of Argument.

In the Supreme Court of the United States. Dec. Term, 1866.

THE DES MOINES NAVIGATION & RAILROAD COMPANY, Plaintiff in Error, *vs.* CALVIN BURR, Defendant in Error. } No. 133. Land.

Now, to wit, December 14, 1866, comes the Iowa Homestead
73 Company, and their grantees, of the State of Iowa, and by their attorney, John F. Duncombe, moves the Court to permit

said parties to intervene in this cause for the purpose of argument on the part of defendant in error, and for the cause state—

1. That said company and their grantees are directly interested in the decision of this cause, in this, to wit: Said company and their grantees claim to be owners in fee-simple of the land named in the pleadings, and over fifty thousand acres of other lands, the title to which is involved in the decisions of the legal questions involved in this suit.

(Signed) J. F. DUNCOMBE,
Attorney for Intervenor.

True copy.
[SEAL.] Test: D. W. MIDDLETON,
Clerk Supreme Court U. S.

Endorsed as follows: Supreme Court U. S., December term, 1866. Des Moines Navigation and Railroad Company, plaintiffs in error *vs.* Calvin Burr. Motion on part of Iowa Homestead Company to intervene for argument. Filed 14th day of December, 1866. Granted J. F. Duncombe for intervenors.

C.—Docket Entries and Extracts from Minutes Supreme Court United States, in the Des Moines Navigation and Railroad Company, Plaintiff in Error, vs. *Calvin Burr.*

Supreme Court of the United States. December Term, 1865.

J. W. Gilbert. P. Smith, (for intervenor.) Chas. Tracy. Litchfield.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY. } No. 303.

In error to the circuit court of the United States for the southern district of New York.

74 *Docket Entries.*

1865.
Nov. 27. Record received and filed.
Dec. 21. Stipulation to submit filed.
" Brief of J. W. Gilbert, for the plaintiff in error, filed.
" Brief of Litchfield, for the defendant in error, filed.
1866.
Jan. 2. Submitted under 20th rule.
Feb. 8. Motion of Mr. Allison for leave to intervene, and also for leave to file printed argument.
" Affidavit of J. M. McKinley filed.
Feb. 13. Leave granted intervenor to file argument before 1st of March.
" 21. Brief of P. Smith, for intervenor, filed.
" 26. On motion of Mr. Cook, leave granted him to file argument before 1st March.

Mar. 12. Ordered to be continued to the next term, with leave to any of the parties to file additional arguments.
" 23. Brief of Mr. B. C. Cook, for intervenor, filed.

No. 204 of December term, 1866. Docket entries continued.

1866.
Dec. 4. Reply brief of Litchfield filed.
" 17. Ordered that counsel have leave to argue this case with No. 133, if desired.
1867.
May 13. Adjudged to be affirmed with costs.

Supreme Court of the United States. No. 303. December Term, 1865.

Extracts from Minutes.

* * * * *

75 SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY. } No. 303.

This cause was submitted to the consideration of the Court on the record and printed arguments by Mr. Gilbert, of counsel for the plaintiff in error, and by Mr. Litchfield, for the defendant in error, under the 20th rule.

2d January, 1866.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY. } No. 303.

On consideration of the motion made and affidavit filed in this cause on the 8th instant, it is now here ordered by the Court that leave be, and the same is hereby, granted counsel of the Dubuque and Sioux City Railroad Company to file and submit printed arguments in this cause at any time before the 1st day of March next.

13th February, 1866.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY. } No. 303.

On motion of Mr. B. C. Cook, leave granted him to file a printed argument in this cause by the first Monday of March next.

26th February, 1866.

76 SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY. } No. 204.

December Term, 1866.

Ordered by the Court that this cause be argued by counsel, if desired, with No. 133, when reached in the regular call of the docket.

Supreme Court of the United States. December Term, 1866.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY. } No. 204.

In error to the circuit court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of New York, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

13th May, 1867.

Per Mr. JUSTICE NELSON.

Mr. Justice Miller took no part in the decision of this case.

True copies of docket entries, extracts from minutes, and judgment.

[SEAL.] Test: D. W. MIDDLETON,
Clerk Supreme Court U. S.

77 Supreme Court of the United States. December Term, 1865.

SAMUEL G. WOLCOTT
vs.
THE DES MOINES NAVIGATION AND RAILROAD COMPANY. } No. 303.

The counsel for the plaintiff and the counsel for the defendant hereby agree to submit, and do submit, this case upon printed arguments.

Dated December 18th, 1865.

(Signed) J. W. GILBERT,
Of Counsel for Plaintiff.

(Signed) EDWIN C. LITCHFIELD,
Of Counsel for Defendant.

True copy.

[SEAL.] Test: D. W. MIDDLETON,
Clerk Supreme Court U. S.

Endorsed as follows: Stipulation to submit. Filed December 21st, 1865.

Supreme Court of the United States. December Term, 1865.

SAMUEL G. WOLCOTT, Plaintiff in Error.
vs.
DES MOINES NAVIGATION AND RAILROAD COMPANY. } No. 303.

In error to the circuit court of the United States for the southern district of New York.

The Dubuque and Sioux City Railroad Company, a corporation,

and by Wm. B. Allison, its attorney, now comes and moves the Court for leave to intervene in the above entitled cause, as a party
78 thereto, and also for leave to file an argument in same for reasons set forth in affidavit filed herewith and made a part hereof.

DUBUQUE AND SIOUX CITY RAILROAD COMPANY,
(Signed) By WM. B. ALLISON, *Its Attorney.*
True copy.
[SEAL.] Test: D. W. MIDDLETON,
Clerk Supreme Court U. S.

Endorsed as follows: Samuel G. Wolcott, plaintiff in error, No. 303, *vs.* Des Moines Navigation and Railroad Company. Motion for leave to intervene on behalf of Dubuque and Sioux City Railroad Company. Filed 8th February, 1866. Wm. B. Allison.

Supreme Court of the United States. December Term 1865.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
DES MOINES NAVIGATION & RAILROAD COMPANY.

In error to the circuit court of the United States for the southern district of New York.

I, James M. McKinley, on oath say that I am an attorney and counsellor-at-law, and am assistant attorney for the Dubuque & Sioux City Railroad Company; that within the past few days, and not before, I have had an opportunity to examine the record in the above-named case; that, to my mind, the said record shows that the attorneys of said Wolcott either did not fully understand their case or the nature of the party opposed to them, or had been instructed not to litigate the case in good faith; that the question involved in said case is one on which depends the title which the Dubuque & Sioux City Railroad Company acquired to about seventy-seven thousand acres of land, to aid in the construction of said road;
79 that a final decision of the above-named case against the plaintiff in error would tend to greatly prejudice the said Dubuque & Sioux City Railroad Company, although they are not a party to the said case; that I have reason to fear the decision of the court below (near bottom of page 61 of the record) was obained on substantially an *ex-parte* presentation of the case, and is greatly prejudicial to the interest of the Dubuque & Sioux City Railroad Company, and is contrary to what would have been the decision on a proper presentation and argument of the case. And, as aforesaid, that an affirmance of the judgment of the court below would prejudice the title acquired by said Dubuque and Sioux City Railroad Company to said seventy-seven thousand acres of land and the title to their grantees.

(Signed) JAMES M. McKINLEY.

Subscribed and sworn to, by James M. McKinley, before me, clerk of the district court of Dubuque, Iowa, February 1, 1866.

Witness my hand and official seal.

[SEAL.] (Signed) M. LEPPER, *Clerk.*

True copy.

[SEAL.] Test: D. W. MIDDLETON,
Clerk Sup. Court U. S.

Endorsed as follows: No. 303. Samuel G. Wolcott, plaintiff in error, *vs.* DesMoines Navigation & Railroad Company. Affidavit of James M. McKinley. Filed 8th February, 1866.

CI.—The Argument of Platt Smith, in Behalf of the Dubuque & Sioux City Railroad Company, in Walcott vs. *The Des Moines Navigation & Railroad Company.*

Supreme Court of the United States. December Term, 1866.

SAMUEL G. WOLCOTT, Plaintiff in Error,
vs.
DES MOINES NAVIGATION & R. R. Co., Defendants in Error.

80 *Argument of Platt Smith, who Intervenes in Behalf of The Dubuque & Sioux City Railroad Company.*

Both of these cases come up from the circuit court of the United States from the southern district of New York. They are both upon the same identical issues, and substantially upon the same state of facts. They are both suits brought against the Des Moines Navigation & Railroad Company to recover damages for alleged failure of title to certain lands in Iowa conveyed by the defendants below to the plaintiffs below by warranty deed. The plaintiffs below are citizens of the State of New York, and the defendant below is a citizen of Iowa.

The lands in dispute lie within five miles of the Des Moines river, and above the mouth of the Raccoon Fork, and in the alternate odd-numbered sections; and they also lie within the six and fifteen-mile limits of the Dubuque & Sioux City Railroad Company, and are included in the act of Congress, granting lands to Iowa, passed May 15th, 1856. The Des Moines Navigation and Railroad Company claim title to these lands under an act of Congress, passed August 8th, 1856, granting lands to Iowa to aid in the improvement of the navigation of the Des Moines river, and under grants and deeds from the State of Iowa, to said company, and also under a joint resolution of Congress, passed March 2d, 1861, and under an act of Congress, passed July 12th, 1862.

The Dubuque and Sioux City Railroad Company claim title to the same lands under an act of Congress, passed May 15th, 1856, granting lands to Iowa to aid in the construction of certain railroads and grants from the State of Iowa to the Dubuque and Pacific Railroad Company, and conveyances from said company to the Dubuque and Sioux City Railroad Company.

Three questions are raised by the records in these causes:

First. Did the act of Congress passed August 8th, 1846, grant
81 the lands in dispute to the State (then Territory) of Iowa, for the purposes specified in the act?

Second. Did the act of Congress of May 15, 1856, grant the lands in dispute to the State of Iowa for the purpose specified in said act, and did the act vest the title to said lands in dispute in the State of Iowa; or were the lands in dispute reserved to the United States so that said act of May 15th, 1856, did not operate to vest them in the State of Iowa?

Third. Did the joint resolution of Congress, passed March 2d, 1861, or the act of July 12th, 1862, pass the title to the lands in dispute to the State of Iowa, and through said State to the Des Moines Navigation and Railroad Company?

The first question was brought directly before this court in the case of the Dubuque and Pacific Railroad Company *vs.* Litchfield, and is reported in 23 Howard, 66.

The court in an elaborate opinion held that the act of Aug. 6th, 1846, did not grant to the State of Iowa any lands above the mouth of Raccoon Fork, and that the Des Moines Navigation and Railroad Company, under whom Litchfield claimed title, had no title to the lands in dispute. That decision must be a finality as far as the construction of that act is concerned. Yet the said Des Moines Navigation and Railroad Company have been making continued attempts to overturn that decision. The defendant, Litchfield, was the president of that company about the time of that decision. (See record, page 5, in the Samuel G. Wolcott case now on hearing.) The judgment entered in the circuit court of Iowa upon the mandate of this court was set aside, and it required the peremptory mandamus of this court to have the judgment stand as the judgment of said circuit court. (Dubuque and Pacific Railroad Company, *ex parte*, 1 Wallace, 69.) A suit was then brought in circuit court of Iowa by Calvin Burr against said Des Moines Navigation and Railroad Company, involving the title to a portion of the same lands as in the present suit, and the case submitted upon an agreed state-
82 ment of the evidence. This case is recorded in 1st Wallace, 99. The Dubuque and Sioux City Railroad Company intervened in that case in this court, and the case was dismissed.

It is clearly for the interest of the plaintiff below in these cases to have the defendant obtain judgment on the question of title, for then they would hold their lands under their deeds. It is also to the interest of the defendants below to succeed, for if it can now succeed in procuring from this court an opinion that the title to the land in dispute is valid, it will give it some one hundred thousand acres of land now held by the Dubuque and Sioux City Railroad Company.

This very readily accounts for the reason that the defendant in the court below should voluntarily go to the State of New York and enter to an appearance to suits there, where it might be out of the way of the interference of the Dubuque and Sioux City Railroad Company.

The records in these cases show that there is no real contest between these parties to the suit, but that the real litigant against both parties is the Dubuque & Sioux City Railroad Company. The other railroad companies interested in the lands granted in the act of May, 1856, which cross the Des Moines above the Raccoon Fork, are also interested in the questions involved.

The second question can only be answered in the affirmative. The act itself vested the title to the lands therein described in the State of Iowa. Its language is: "That there be, and is hereby, granted to the State of Iowa for the purpose," etc. This is a present grant. The particular lands granted are made certain by the location of the line of the road, and all the estate of the United States passed by the act itself to the State of Iowa. We refer to a few of the authorities on this point, as it seems so well settled as to be beyond dispute. (United States *vs.* Brocks, 10 Howard, 442; Lassieur *vs.* Price, 12 Howard, 59; Dubuque & Pacific Railroad Company *vs.* Litchfield, 23 Howard, 66.)

83 In this last case the court, speaking of the act of August 8th, 1846, where the granting clause is the same language as the act of May 15th, 1856, used the following language: "The act of Congress was a direct grant to Iowa in fee of the undivided moiety of the whole track on each side of the river from the Raccoon Fork to the Missouri line. Congress had the undoubted power to make the grant and vest the fee." The record in the case of S. G. Walcott, p. 46, shows that said road was located on the 27th day of Sept., 1856, and the lands in dispute lie within the six-mile limit of the line of said road and the alternate odd-numbered sections. On the 14th day of July, 1856, the General Assembly of Iowa passed an act granting all the lands included in the act of May 15th, 1856, to aid in the construction of the railroad from Dubuque to a point on the Missouri river, at or near Sioux City, to the Dubuque & Pacific Railroad Company. The granting part is in the following language: "Are hereby disposed of, granted, and conferred to and upon the Dubuque & Pacific Railroad Company," etc. This is a grant *in presenti*, and vested the title to the lands in said company. Upon the location of the line of said road the title in the particular lands vested, and the United States had no remaining interest in them. On the 9th day of July, 1857, said company conveyed the lands in dispute by deed of trust to certain parties to secure bonds to be issued for the construction of the road, and on the — day of November, 1863, said Dubuque & Sioux City R. R. Company (which had become vested with the right and title of the Dubuque & Pacific Railroad Company in said lands) conveyed the same to George J. Forrest and others.

It is now claimed that the proviso to the first section of the act of May 15th, 1856, excepted the lands claimed by the Des Moines Navigation & Railroad Company from the operation of this grant. That proviso is as follows: "And provided further, That any and all lands heretofore reserved to the United States by an act

84 of Congress, or in any other manner by competent authority, for the purpose of aiding in any objects of internal improve-

ments, or for any other purpose whatever, be, and the same is hereby, reserved from the operation of this act," etc. It is not claimed that any act of Congress had reserved the lands in dispute to the United States, unless the decision in the case of the Dubuque & Pacific Railroad Company *vs.* Litchfield, 23 Howard, is erroneous, and is to be overruled. But it is claimed that these lands were reserved to the United States by certain executive officers of the Government, and that the joint resolution of March 2nd, 1861, and the act of Congress of July 12th, 1862, vested these lands in the State of Iowa, and through it in said Des Moines Navigation & Railroad Company. The above proviso requires that the reservation be to some legal purpose and by competent authority. The only purpose claimed for such reservation was to aid in the improvement of the Des Moines river. Aut this court held in the above case, in 23 Howard, that the lands in dispute were not reserved, and that no right in or to them passed by the act of Aug. 8, 1846. No reservation has been made by competent authority. The evidence set out in the record shows that prior to the act of May 15th, 1856, the proper executive officers of the Land Department of the United States had constructed the act of August 8th, 1846, as a grant extending above the mouth of the Raccoon Fork, and as including the lands in dispute; that the lands in dispute had been selected as within said grant, and that such selections had been approved by the proper executive officers of the United States. If these officers had the authority to make a reservation within the aforesaid proviso, and did make such reservation, then the Dubuque and Sioux City Railroad Company has never had any title to the said lands.

The absolute power and the right of disposition of the public lands of the United States is in Congress; no such right exists in any of the officers of the Government, unless specially conferred
85 for some particular purpose by act of Congress. The only authority conferred by act of Congress is the act of Aug. 8th, 1864, and this court has held that no right of reservation was conferred upon such officers by that act. In the case of 23 Howard, above quoted, the court says: "No authority was conferred upon the executive officers administering the public lands to do more than make partitions between the tenants in common, Iowa and the Unied States, in the manner prescribed by Congress. The premises in dispute lie sixty miles beyond the limits of the trust granted. It was therefore impossible to make partition under this grant, of lands lying outside of its boundaries, and all attempts to do so were merely nugatory." These officers never claimed or professed to reserve these lands to the United States by any right in themselves to do so, but only for the purpose of carrying into effect the act of August 8th, 1846. These officers have power to offer for sale, and to suspend from sale, the public lands of the United State, as prescribed by law, but no authority is conferred upon them to reserve the public lands for any particular uses. On the 1st of June, 1849, the officers of the land office at Iowa City were directed to withhold from sale the lands in dispute. (See record in the Wolcott case, page 12.) These executive officers withheld these lands from sale, not as a reserva-

tion, but temporarily, till the construction of the act could be judicially decided. (See same record, pages 14 and 15, 26 and 37.) On the 10th day of May, 1856, just before the act of May 15th, 1856, was passed, all the land offices in Iowa were directed to suspend from sale all the lands in the several land districts. If a simple withholding of lands from sale or a suspension of lands from sale by the executive officers is a reservation to the use of the United States for a particular purpose, then the State of Iowa acquired no title to any lands in Iowa, or it acquired the title to all the lands in said land office districts, for all the lands were reserved from sale. We therefore insist that no reservation of the lands in dispute had been made by competent authority, and that the title to the lands vested in
86 the State, and that no act of the executive officers, or even of Congress, could divest the State of Iowa of such title after the acceptance of the grant by the State.

Third. We further claim that under the last question no title to the land in dispute passed to the State of Iowa under the joint resolution of 1861, or the act of Congress of July 12, 1862, for the reason that the United States had no title to grant.

It had already divested itself of the title by the act of May 15th, 1856. No title could pass from the State of Iowa under the act of July, 1862, for the reason that a grant by a State is not a warrantee, and a subsequently-acquired title does not inure to a grantee from a sovereign power. "Grants made by a legislature are not warrantees, and the rule universally applied in determining their effects is that if the thing granted was not in the grantor at the time of the grant, no estate passed to the grantee." (Brice *vs.* Railroad Company, 1 Black, 374.)

All the questions involved in these cases seem to have been fully settled by the prior adjudication of this court, and we trust that the decision in these cases will end litigation in regard to the title to these lands.

PLATT SMITH,
For Intervenor.

Defendant then read from the deposition of John B. Thompson, filed Nov. 17, 1881, as follows:

I have sustained no official or business relation with the Dubuque & Sioux City Railroad Company, except that I have been a stockholder. I was the secretary and treasurer of the Iowa Homestead Company during its existence, from 1864 to June, 1873.

I don't know anything about Mason Thompson's connection with the Dubuque & Sioux City Railroad Company. I know there is such a man as Mason Thompson. I do not know in respect to his connection with the railroad company referred to in the question.
87 The Homestead Company had its regular board meetings as long as I was connected with it—up to June, 1873. I know of no meetings independent of the board meetings after 1873.

Soon after Jesup became president of the Dubuque & Sioux City Railroad Company the railroad company became owner of five-ninths of the stock of the Homestead Company, and after such

change of ownership of the stock there was a new board of directors made of the Homestead Company. Morris K. Jesup, D. Willis James, J. Pierpont Morgan, and J. A. Roosevelt, George J. Forest, Edward Stimpson, and Isaac H. Knox were directors in the companies.

The railroad company owned a majority of the stock of the Homestead Company since the year 1866. I cannot say exactly what date. It was soon after the time that Morris K. Jesup became president of the railroad company; it might have been within two months or within a year after that date.

By owning a majority of the stock they controlled the Homestead Company, and they worked harmoniously with our board.

I know that after Jesup became president of the railroad company all stock of the Homestead Company held by the directors of the railroad company was transferred to the railroad company, amounting to five-ninths of the whole stock. I think it was within a year afterwards, but am not positive. In June, 1873, I sold the railroad company my stock, 560 shares, and took the Dubuque & Sioux City Railroad Company's notes, payable in one, two, three, and four years, and as secretary of the company I can say they purchased at the same time the balance of the stock that was held by other stockholders other than the railroad company on the same terms. As to how much of the stock was owned by the railroad company on the 1st of Oct., 1868, I cannot answer, for the reason that I cannot fix the time when Jesup became president, and by whom the stock has been held since June, 1873; I cannot answer except as above.

88 Soon after Jesup became president there was transferred to the railroad company five-ninths of the entire stock of the Homestead Company, and in June, 1873, as before stated, the railroad company purchased from me and other owners the balance of the stock, making the entire stock of the Homestead Company. I think it was shortly after Jesup became president.

Q. State whether or not there was an agreement between said railroad company and said Homestead Company that, in case of failure of the title to the Webster county lands purchased by the latter of the former, that the railroad company would pay back to the Homestead Company the original cost, with ten per cent. interest thereon; and if so, whether or not any record or memoranda of such agreement was or should have been recorded in the books of both or either of said companies; and if so, in what book or books.

A. There was an agreement to that effect amongst the Iowa Homestead Company's papers. I don't think it was recorded in any book at all.

Q. Is it or is it not true that said railroad company paid the cost and expenses of the litigation in the case of the Iowa Homestead Company against the Des Moines Navigation & Railroad Company, commenced in the district court of Webster county, Iowa, in October, 1868, and taken by appeal to the Supreme Court of the United States, to settle the question of title as to said Webster county lands? State fully all you know with respect to the payment of said costs and expense; whether paid in full by said railroad company, or

jointly by said railroad company and said Homestead company, and if jointly, in what proportion the same were paid by them; and state further whether or not the matter of the payment of said costs and expenses, or provision therefor, was considered or discussed at any meeting of the board of directors of either of said companies at which you were present; and if so, state whether or not both of said companies were represented at such meeting, and if not both, whether or not said railroad company was represented at such meeting.

89 A. I cannot answer whether they paid them or not. They agreed to defend the title. The Iowa Homestead Company never paid a dollar of the expenses. It was never discussed at the Iowa Homestead Company's meetings, and I know nothing about what was done in the railroad company's meetings. I have already stated that the railroad company owned a majority of the stock of the Homestead Company, and we were working harmoniously.

From W. J. Barnes' deposition as follows:

I was land agent for the Iowa Homestead Company from its organization up to some time in 1873. I have had no official relation at any time with the Dubuque & Sioux City Railroad Company.

Q. State whether or not you had, at the time of and previously to the commencement of the suit in the district court of Webster county, Iowa, by the Iowa Homestead Company against the Des Moines Navigation Company and others, for the purpose of trying the title to certain land lying in Webster county, Iowa, claimed by said companies respectively, and in which said Homestead Company sought as alternative relief the recovery of certain taxes paid by said Homestead Company, knowledge of the fact that said suit was and was to be commenced.

A. I had nothing to do with the suit mentioned, although I think it was mentioned to me that such suit would be brought. I neither directed nor participated in the direction of said suit. I don't recollect now exactly who were the officers of the Iowa Homestead Company at the time, but believe they were Morris K. Jesup, president, and John B. Dumont, secretary and treasurer. As to the directors, I have forgotten who they were. As to the officers of the railroad company, cannot say.

I don't think the Iowa Homestead Company paid taxes for 1861,-'2, and '3. I think I paid all their taxes, and my accounts don't show that I paid such taxes for them.

90 From the deposition of George Crane as follows:

Int. 14. Do you know whether or not the books of the D. & S. C. R. R. Co. contain any evidence now with respect to payment of taxes on the lands in controversy in this suit?

Ans. I think they do for a certain year. The only year I looked for was a payment in 1866.

I have been the attorney of the plaintiff in this case since 1875 or 1876; possibly since 1874.

My correspondence was not with him, Goodnow, with respect to my employment in the first instance. I think it was with Dumont.

Int. 30. State whether or not you, either by correspondence or orally, communicated with Dumont on the subject before the date of the assignment from the Homestead Company to plaintiff Goodnow of the cause of action in this suit.

Ans. It is possible I did. I do not know how or when. I cannot recollect when the subject was first talked of without refreshing my memory. Dumont acted for my client; may possibly have had a conversation with him before the assignment was made. It may have been before my present client, Goodnow, so far as I know, had any interest at all in the subject-matter of this present litigation. I presume it is true that it was before the assignment to him. What interest, if any, he had before that I don't know.

Int. 63. State whether or not your conversation with him, Dumont, related to both assignments, and whether or not in that communication, whatever its character was, he represented both companies.

A. I think we talked about the taxes for all the years. I cannot say that he represented either company, as a matter of fact, only we talked over the subject-matter of the recovery of those taxes; and if he was acting for the company—that is, representing the company—I did not know it.

91 From George J. Forest's deposition as follows:

I have been a stockholder in the Dubuque and Sioux City Railroad Company for many years; I have no interest in its property to-day; I was not a director; I or my firm were stock-holders in the Homestead Company, and I have been told that I was a director and an officer; I have no distinct recolletion of my official capacity in the company.

Q. State whether or not you had, at the time and previously to the commencement of the suit in the district court of Webster county, Iowa, by the Iowa Homestead Company against the Des Moines Navigation and Railroad Company and others, for the purpose of trying the title to certain lands lying in Webster county, Iowa, claimed by said companies, respectively, and in which said Homestead Company sought as alternative relief the recovery of certain taxes paid by the said Homestead Company, knowledge of the fact that said suit was or was to be commenced.

A. I have no recollection of any such suit.

Q. State whether or not if you were present when the assignment by either said Homestead Company or said railroad company to Goodnow was made, and, if so, whether said Goodnow was present, and when were said assignment, or either of them, made.

A. I was not present; I do not know whether Goodnow was present or not.

Q. State whether or not you arranged with said Goodnow for the making to him of either of said assignments, and, if so, state whether the same was done orally or by correspondence, and what interest, if any, said Goodnow has in the claim so assigned to him or either of them.

A. I did not.

92 Q. State by what authority the assignment of the cause of action herein to the plaintiff, Goodnow, was made, whether or not it was authorized at and by any meeting of the stockholders, directors, or of any committee of the assignor, and, if so, by which and when, and where was such meeting held and who composed the same.

A. I know nothing about it.

From Mason Thompson's deposition as follows:

I am a director of the Dubuque and Sioux City Railroad Company; I have been connected with such direction four or five years. I am also a director of the Iowa Homestead Company, and have been so during the same period. I acted as president *pro tem.* of that company for a short term during the absence of the president. The board of directors of the Iowa Homestead Company have not held any separate meetings as such, and the directors of both companies are the same persons. I understand that the railroad company owns a majority of the stock of the Homestead Company and has controlled its affairs ever since my connection with the company; and as the railroad company owns the lands, any discussion in regard to them or any matters in reference to the Homestead Company have been had at the meetings of directors of the Dubuque and Sioux City Railroad Company.

Q. State whether or not you had, at the time of and previously to the commencement of the suit in the district court of Webster county, Iowa, by the Iowa Homestead Company against the Des Moines Navigation & R. R. Co. and others, for the purpose of trying the title to certain lands lying in Webster Co., Iowa, claimed by both companies, respectively, and in which said Homestead Company sought as alternative relief the recovery of certain taxes paid by said Homestead Company, knowledge of the fact that said suit was or was to be commenced.

A. I do not know anything about any of these matters of eight years ago.

93 Q. State where the plaintiff, Edward K. Goodnow, resides and what official or other business relation, if any, he sustains to the said Homestead or said railroad company.

A. He is a partner of Mr. Jesup, who is president of the Dubuque and Sioux City Railroad Company, and has an office with him. I do not know where he resides. I do not know that he is officially connected with either of said companies. I know he is not an officer or director of either of said companies.

Q. State whether or not you were present when the assignment by either said Homestead Company or said railroad company to Goodnow was made; and, if so, whether said Goodnow was present, and when and where were said assignments, or either of them, made.

A. I know nothing in respect to the matters inquired of.

Q. State by what authority the assignment of the cause of action herein to the plaintiff, Goodnow, was made; whether or not it was

authorized at and by any meeting, either of the stockholders, directors, or any committee of the assignor; and, if so, by which, and when and where was such meeting held, and who composed the same.

A. I know nothing in respect of the matters so inquired of, and cannot answer that question.

Q. State, if you can, which of said companies, the Homestead Company or the railroad company, furnished the money in the first instance with which the taxes on said Webster county lands for the years 1861, '62, and '63, and each thereof, were paid, and whether or not the same was so furnished for the use of the company so furnishing the same; and, if not, for whose use was it furnished, and what adjustment, if any, was subsequently made with respect thereto.

A. I have no personal knowledge in respect to this matter inquired of. The matter, however, has been talked over at the meet-
94 ings of the board when I was present, and I understood from these conversations that the matter was referred to the officers for them to bring suit, and to take whatever measures were necessary. I supposed the taxes had been paid, and these suits were for the purpose of recovering them back. This occurred in the meeting of the board of directors of the Dubuque and Sioux City Railroad Company. These conversations referred to have occurred within the last three or four years.

From John B. Thompson's deposition, filed November 19th, 1881:

I have never had any connection with the Dubuque & Sioux City Railroad Company. I was, however, secretary and treasurer of the Iowa Homestead Company from 1864 to 1873.

Q. State whether or not you had, at the time of and previously to the commencement of the suit in the district court in Webster county, Iowa, by the Iowa Homestead Company against the Des Moines Navigation Company and others, for the purpose of trying the title to certain land lying in Webster county, Iowa, claimed by said companies, respectively, and on which said Homestead Company sought, as alternative relief, the recovery of certain taxes paid by said Homestead Company, knowledge of the fact that said suit was and was to be commenced.

A. I have no knowledge of there being any disputed title to the lands. I cannot now reflect whether I had knowledge of the fact that such suit was or was to be commenced.

Q. If, in answer to the last interrogatory, you say you had knowledge of the suit therein referred to at the time of its commencement, state whether or not you directed, or participated with others in directing, its commencement; and, if so, state the names of all the officers of said Homestead Company and said Dubuque & Sioux City Railroad Company, as far as you can remember, with whom you consulted about the commencement of the same before it was commenced.

95 A. I cannot answer clearly. I suppose it must have been by action of the board directing the secretary and treasurer

to bring the suit. Not having the books I cannot make any references to them. I know that there were no entries on our books for taxes of 1861, 1862, and 1863. The Iowa Homestead Company paid the taxes regularly from 1864 up to 1873, when my connection with the company terminated. I cannot answer where they (the tax receipts) are now. I gave them up in 1873 to the Dubuque & Sioux City Railroad Company. I think there were no taxes paid by the Homestead Company to my recollection from 1859 till 1864.

I only know him (the plaintiff, Edward K. Goodnow) as a partner of Morris K. Jesup & Co. I do not know him in connection with either of these companies.

I know nothing about the assignment of the claim sued upon to plaintiff, and was not present when it was made. Don't know by what authority it was made.

The Iowa Homestead Company held a warrantee deed from the Dubuque & Sioux City Railroad Company, and in addition they held an agreement that they (the Railroad Company) would defend the title at their own expense, which they did.

From Morris K. Jesup's deposition, as follows:

I am president of the Dubuque & Sioux City Railroad Company, and have been since the early part of 1866. I have no relations with the Iowa Homestead Company officially, and never have had.

Who on behalf of said Railroad Company had the chief control and direction of said suit, and who employed, consulted with, and generally gave instructions to the attorneys who had charge of it?

I am president; and I presume if any directions were given, I must have given them—I do not know.

96 He (Edward K. Goodnow, the plaintiff) resides in Brooklyn; I am not aware that he sustains any official relations with either the Land Company or the Railroad Company.

Q. State whether or not you were present when the assignment by either said Homestead Company or said Railroad Company to Goodnow was made; and if so, whether said Goodnow was present, and when were said assignments or either of them made.

A. I do not recollect anything about it.

Q. State whether or not you arranged with said Goodnow for the making to him of either of said assignments; and if so, state whether the same was done orally or by correspondence, and what interest, if any, said Goodnow has in the claims assigned to him, or either of them.

A. Not that I remember; I have no recollection of any arrangement between Mr. Goodnow and the Iowa Homestead Company or the Railroad Company at all.

Q. State by what authority the assignment of the cause of action herein to the plaintiff Goodnow was made, whether or not it was authorized at and by any meeting, either by the stockholders, directors, or any committee of the assignor; if so by which, and when and where was such meeting held; who composed the same.

A. I have no recollection of anything of the kind; I presume, however, if anything of the kind was done it was done by the board of directors; I remember nothing about it.

I do not remember of any record of the proceedings authorizing said assignment having been made.

From J. B. Dumont deposition, as follows:

I have been assistant secretary of the Dubuque & Sioux City R. R. Co. since sometime in 1864, and treasurer since sometime in June, 1876, and secretary of the Iowa Homestead Company since sometime in 1873.

97 Q. State whether or not at any time during the years 1874, 1875, and 1876 you had a conversation with George Crane, Esq., at the city of Dubuque, Iowa, with respect to the commencement of a suit or suits for the recovery of the taxes, or any part of them, paid by the Iowa Homestead Company and said Railroad Company from the year 1859 to the year 1872, both inclusive, or either of them; if so, state what was said in said conversation about assigning the claims respectively of said companies, or either of them, to Mr. Edward K. Goodnow or to any other person, that the same might be sued in name of the assignor.

A. I have no recollection of any such special conversation; Mr. Crane was counsel of the Dubuque & Sioux City Railroad Company, and it is not unlikely that I had some conversation with him; I do not remember what was said. The plaintiff Goodnow resides in Brooklyn, N. Y., and sustains no official or business relations with either company. I do not remember being present when the assignments were made; I do not know whether he (Mr. Goodnow) was present or not; I do not remember when they or either of them were made.

Q. State by what authority the assignment of the cause of action herein to the plaintiff Goodnow was made; whether or not it was authorized by any meeting, either of the stockholders, directors, or of any committee of the assignor, and, if so, by which and when and where was such meeting held, and who composed the same.

[A.] The records of the company are in Dubuque; I do not know; I cannot state by what authority; I cannot state whether any such record of the proceedings authorizing said assignment was made, as the records of the company are in the Dubuque office.

The plaintiff then offered in evidence the original assignments.

They were objected to by defendant because—

98 1. There is no evidence of the authority of the officers by whom it purports to have been executed to execute the same.

2. There is no evidence of the execution of the same by the officers.

3. There is no certificate of acknowledgement as to the assignment relied upon in this case.

The assignment purports to have been made in the State of New York by an Iowa corporation, and no authority is shown for them to transact business outside of the territory creating them.

5. For the reason that the instrument shows it was executed long after these suits were commenced, and there is no evidence that the assignments were ever delivered by the Railroad Company to the plaintiff.

The assignment, a copy of which is attached to the plaintiff's petition and marked Exhibit B, was read in evidence.

Plaintiff then read in evidence a duplicate of the assignment attached to said petition, and the following acknowledgment thereof:

STATE OF NEW YORK, *New York City and County:*

On this 8th day of April, A. D. 1881, before me, a notary public in and for said county, personally came M. K. Jesup, president of the Dubuque and Sioux City railroad, and John B. Dumont, secretary of said company, to me personally known to be the identical persons whose names are affixed to the above instrument as grantors and officers of said company and acknowledge the same to be their voluntary act and deed, and the voluntary act and deed, of said Railroad Company, for the uses and purposes therein mentioned.

Witness my hand and notarial seal.

[SEAL.] J. C. FRENCH,
Notary Public, Kings County.

99 DEPARTMENT OF THE INTERIOR,
WASHINGTON, *October* 1, 1860.

SIR: In reply to your letter of the 29th ultimo, I have to inform you that a letter was addressed to the Commissioner of the General Land Office on the 6th of that month, which was responsive to your application of the 26th June last, for the certification of lists of certain lands to the State of Iowa, under the grants for aid in constructing railroads in that State.

A copy of my letter is now enclosed, with the remark that in the reports of the Commissioner of the General Land Office of the 7th of July and 3d of September, therein referred to, it is not stated whether the lands which you desire to have listed under the railroad grant are, or are not, in whole or part such as have already been certified to the State erroneously, under the grant for the improvement of the Des Moines river. I make this remark, deeming it probable that the Commissioner's objections, as my own, have been chiefly restricted to lands that have been heretofore erroneously certified, and not to all that have been illegally claimed under the Des Moines grant.

Very respectfully, your obedient servant,
J. THOMPSON, *Secretary.*

WASHINGTON, *September 26th*, 1860.

Hon. JOSEPH S. WILSON, *Commissioner General Land Office.*

SIR: Understanding that the Hon. Secretary of the Interior hesitates to comply with my requests of the 26th of June last, for the approval of the Des Moines river lands in Iowa, enuring to the railroads, because it does not appear that the Governor has requested the same. I beg leave to state that the duly authorized agent of the Governor (Mr. Henn), as you are personally aware, did request that these lands should be approved to the roads, and that on Mr.

Henn's leaving Washington, I had full power to act in his
100 stead, which I have since done, and my acts have been recognized. I am likewise authorized by the several companies, the assignees of the State, to do the specific act as well as others.

I make the above statement in order to guard against errors and to disabuse the mind of the Secretary on the point mentioned, and through you, under the circumstances, respectfully renew my previous request.

Very respectfully, your obedient servant,

WM. T. STEIGER, *Agent, etc.*

WASHINGTON, *June 26th*, 1860.

Hon. JACOB THOMPSON, *Secretary of the Interior.*

SIR: Immediately after the recent adverse decision of the Supreme Court of the United States, on the Des Moines river claim to lands above the Raccoon Fork, in the State of Iowa, as the agent of two of the railroads I filed in the General Land Office lists of selection of the interfering lands thus enuring to the roads, in order that they might be approved and certified in the usual form.

The Commissioner of the General Land Office, in acknowledging the receipt of the lists, informed me that the matter, alluding to the Des Moines river conflicting claim, having been placed in train for Congressional intervention, no action could be taken at present upon my application.

Since the adjournment of Congress I have taken particular pains to ascertain what, if anything, had been done, and find that the Committee on Public Lands of the Senate, before whom this matter was pending, have taken no further action upon it since your communication to them on the 11th instant. It will, therefore, under the general rule adopted by the Senate relating to unfinished business, be carried over to the next session.

The difficulty of reporting at the present session, as far as I
101 can learn, had no reference to the rights of the railroads, or doubts as to the correctness of the view expressed by the Department on the 11th instant, that since the decision of the Supreme Court those rights can no longer be called in question, and that they thus save the lands to the State, but whether or not it would be proper or expedient to recommend a grant of lands in addition to those already granted, and, if so, to what extent, as proposed in the resolution substituted by the Department, and the several bills and resolutions before the committee having a similar object.

As these lands, for the cause mentioned, have been held suspended from the commencement of the adjustment of the railroad grants more than three years ago, to the serious disadvantage of the railroad companies, and it is now admitted that there can be no question as to the right of the State to them under the act of May 15th, 1856, I most respectfully but earnestly request that there may be no further delay in certifying the proper lists to the State and the railroad companies, in order that the latter may at once avail themselves of the aid and benefit derived from them in the prosecution of their respective works, as intended by the original grant.

As an additional reason for granting my requests, I beg leave to suggest that if delayed for legislation of Congress at its next session, even should expectation of relief not then be disappointed, it would postpone any final action until after the 4th of March, or to the next

administration. How much longer no reasonable calculation could be made, as it is fair to presume that the new officials would require some time to acquaint themselves with all the facts. This course, if followed, would be as ruinous as it would be unjust to the railroad companies, who are firmly bound to the State, and through it to the United States, for the faithful performance of all the conditions of the grant, including the completion of the roads in the time specified. Besides, whatever the future legislation of Congress
102 may be, it would undoubtedly save our vested rights in the lands, and therefore not interfere with the approval now asked of the Department.

I am, with great respect, your obedient servant,

WM. T. STEIGER, *Agent, etc.*

Endorsed: Department of the Interior, June 28th, 1860. Respectfully referred to the Commissioner of the General Land Office for report. Moses Kelly, chief clerk.

Commissioner Wilson to Secretary Thompson, September 3rd, 1860.

GENERAL LAND OFFICE, *September 3rd*, 1860.

Hon. J. THOMPSON, *Secretary of Interior.*

SIR: I have the honor to return herewith the communication from W. F. Steiger, Esq., of the 10th July last, relative to his application for the certification of certain lands above the Raccoon Fork of the Des Moines river to the Iowa railroads, and respectfully state that we find no reason therein for a change of our recommendation of the 7th July last; that further proceedings in the matter by the departments be delayed until after the close of the next session of Congress.

Very respectfully, your obedient servant,

JOS. S. WILSON, *Commissioner.*

103 *Secretary Thompson to the Commissioner of the General Land Office, September 6th, 1860.*

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *Sept. 6th*, 1860.

SIR: In the absence of any direct application by the Governor of the State of Iowa for final action in the certification of certain lands common to the claimed limits of the grant to that State for the improvement of the Des Moines river, and the grants for aid in constructing railroads, my opinion is that it will be proper, as you suggest, to delay action until after the close of the next session of Congress.

The papers enclosed with your letters of the 7th of July last and 3d instant, are now returned.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

GEORGE CRANE, being sworn, testified as follows:

I am rather familiar with the handwriting of Morris K. Jesup; I was not present when the assignment was executed.

My judgment would be that the signature is in the handwriting of Morris K. Jesup.

I am not positive whether the assignment was transmitted to Mr. Jesup by me or not; I think I received it back from him; I do not recollect now of having any correspondence with Mr. Jesup upon the subject of the assignment.

The foregoing is all the evidence introduced or offered by the parties in this suit, or either of them, at the trial or hearing thereof.

After due consideration the court rendered the following decree:

This cause coming up for final hearing this 2d day of October,
104 A. D. 1883, and the same having been duly argued by counsel, and considered by the court, the court finds that the plaintiff, Edward K. Goodnow, is entitled to recover of the defendant, R. B. Chapman, the sum of $955.38-100, being the principal sums paid and interest thereon, only from the commencement of this suit, and further finds that plaintiff is entitled to a lien on the following-described lands, to wit:

The northwest ¼ of section five (5), northeast ¼ of section nineteen (19), township 88, range 27; the east ½ of southeast ¼ of section 1, the northwest fractional ¼ and west fractional ½ of southwest ¼, section 7, township 87, range 27; the northeast ¼ of section 5, south ½ section 9, northeast ¼ of section 17, township 88, range 28, all in Webster county, Iowa, being lands described in petition to secure the payment of said claims, but finds and decides that each forty acres of said lands is liable only for the taxes levied and assessed thereon. It is therefore ordered and decreed that plaintiff have and recover of and from the defendant the said sum of nine hundred and fifty-five and $\frac{38}{100}$ dollars and costs of suit, taxed at $———. It is further decreed that the sum of $29.85 of the sum above found due be, and is hereby, made a special lien on each forty acres of the land above described, from the 28th day of April, 1873, and that a special execution be issued and the lands above described be sold thereunder, in accordance with this decree and the provisions of law, and in the event that said lands do not sell for enough to pay said claim, interest, and costs of suit, that plaintiff have a general execution to make such balance.

And afterwards the plaintiff, Goodnow, gave due notice and perfected his appeal from the decision of the district court to the supreme court of Iowa, and afterwards the defendants gave due notice and perfected his cross-appeal from said judgment to the supreme court of Iowa.

Defendant consents that in computing interest a rest may be made on the 13th day of March, 1883. To which several rulings both parties excepted.

In the following causes the record, pleadings, issues, and evidence are precisely the same in all respects as in the case of Edward K. Goodnow vs. R. B. Chapman, except the title of the cause, the allegation as to amount of taxes paid, description of lands, dates,
105 and amounts of taxes paid in the agreed statement of facts and the forms of the decrees, each and all of which are as follows:

EDWARD K. GOODNOW *vs.* SAM'L G. WOLCOTT.

Amounts Alleged to Have Been Paid.

For the year 1864	$112 00
For the year 1865	192 80
For the year 1866	235 25
For the year 1867	140 20
For the year 1868	162 65
For the year 1869	215 35
For the year 1870	251 10
For the year 1871	290 50

Description of Lands.

The northwest quarter section five (5), northeast quarter section 19, township eighty-eight (88), range 27; east half southeast quarter sec. one, northwest fr. quarter and west fr. half of southwest quarter section 7, township 87, range 27; northeast quarter section 5, south half section 9, northeast quarter section 17, township 88, range 28, all in Webster county, Iowa.

EXHIBIT A.

Referred to and Made Part of the Agreed Statement of Facts.

For 1864, paid	Jan. 16th, 1865		$121 82
" 1865, "	Nov. 25th, 1865		133 09
" 1866, "	Feb. 28th, 1867		153 48
" 1867, "	July 1st, 1868		22 50
" 1868, "	April 30th, 1869		103 37
" 1869, "	Feb. 28th, 1870		128 28

106 *Decree.*

EDWARD K. GOODNOW *vs.* SAM'L G. WOLCOTT.

This cause coming up for final hearing this 2d day of October, A. D. 1883, and the same having been duly argued by counsel and considered by the court, the court finds that the plaintiff, Edward K. Goodnow, is entitled to recover of the defendant, Sam'l G. Wolcott, the sum of $504.56, being the principal sum paid, and interest thereon only from the commencement of this suit; and further finds that plaintiff is entitled to a lien on the following-described lands, to wit, the northwest ¼ of section one (1), township 88, range 28; east ½ of section 17, township 88, range 27, all in Webster county, Iowa, being lands described in petition, to secure the payment of said claim; but finds and decides that each 40 acres of said lands are liable only for the taxes levied and assessed thereon. It is therefore ordered and decreed that the plaintiff have and recover from the defendant the said sum of five hundred four and $\frac{56}{100}$ dollars and costs of said suit, taxed at ——.

It is further decreed that $42.04 of the sum above found to be due be, and is hereby, made a special lien on each 40 acres of the land above described from the 28th day of April, 1873, and that a special

execution be issued and the lands above described be sold thereunder in accordance with this decree and the provisions of law; and in the event said lands do not sell for enough to pay said claim, interest, and cost of suit, that plaintiff have a general execution to make such balance.

Defendant consents that in computing interest a rest may be made on the 13th day of March, 1883; to which several rulings both parties excepted.

107 EDWARD K. GOODNOW *vs.* WM. J. MCALPINE.

Amounts Alleged to Have Been Paid.

For the year 1864	$54 25
For the year 1865	91 70
For the year 1866	115 20
For the year 1867	68 50
For the year 1868	85 10
For the year 1869	116 25
For the year 1870	129 15
For the year 1871	149 90

Description of Lands.

All of section 5, township 89, range 28, in Webster county, Iowa.

EXHIBIT A.

Referred to and Made Part of the Agreed Statement of Facts.

For 1864 paid Jan. 17th, 1865	$38 43
" 1865 " Nov. 11th, 1865	54 68
" 1866 " Feb. 28th, 1867	84 09
" 1867 paid by defendant.	
" 1868 " April 26th, 1869	64 26
" 1869 " Feb. 28th, 1870	74 23
" 1870 " Feb. 28th, 1871	142 96
" 1871 " Feb. 29th, 1872	152 98

Decree.

EDWARD K. GOODNOW *vs.* WM. J. MCALPINE.

This cause coming up for final hearing, this 2nd day of October, A. D. 1883, and the same having been duly argued by counsel and considered by the court, the court finds that the plaintiff, E. K. Goodnow, is entitled to recover of Wm. A. McAlpine the sum of
108 eight hundred eighty-one and $\frac{96}{100}$ dollars, being the principal sum paid, and interest thereon only from the commencement of this suit; and further finds that plaintiff is entitled to a lien on the following-described lands, to wit, all of section five (5), township 89, range 28, all in Webster county, Iowa, being lands described in the petition, to secure the payment of said claim.

It is therefore ordered and decreed that plaintiff have and recover of and from the defendant the sum of eight hundred eighty-one and $\frac{96}{100}$ dollars, and costs of suit, taxed at $——.

It is further decreed that this decree be, and is hereby, made a special lien on said land from the 28th day of April, 1873, and that a special execution be issued, and the lands above described, or so much as may be necessary, be sold thereunder in accordance with this decree, ond if the said lands do not sell for enough to pay said claim, interest, and cost of suit, that plaintiff have a general execution to make such balance. Defendant consents that in computing interest a rest may be made on the 13th day March, 1883; to which several rulings both parties excepted.

And afterwards the plaintiff, Goodnow, gave due notice and perfected his appeal from the decision of said district court to the supreme court of Iowa.

And afterwards the defendant gave due notice and perfected his appeal from said decision to the supreme court of Iowa.

GEORGE CRANE,
Attorney for Plaintiff.

Assignment of Errors.

1. The court erred in not allowing interest from the time of payments to the county.
2. The court erred in not allowing plaintiff a lien on all the land for all the taxes paid.
3. The finding of the court is contrary to the law and the evidence in the case.
4. The finding or decision of the court is not in accordance with the law or the equity of the case.

109 5. The evidence shows that plaintiff was entitled to a decree for the taxes paid by his assignor and interest thereon from the time of payments made.

GEORGE CRANE,
Attorneys for Plaintiff.

All three of the foregoing causes were submitted at the same time and determined by the district court upon the record, pleadings, issues, and evidence, above mentioned, which was all the evidence offered or introduced by the parties at the trial of said causes. In each of said causes an appeal and cross-appeal was duly taken and perfected by notice according to law.

And said causes are hereby submitted to this court on the same record, pleadings, evidence, assignment of errors, and arguments of counsel, with the changes necessary to make the same applicable in each cause.

And it is hereby stipulated and agreed that all three of the above-entitled suits may be submitted to this court and tried upon this abstract and record, and the same shall all be submitted at one hearing before this court. Signed this 30 day of November, 1883.

THEO. HAWLEY,
Def't's Att'y.
GEO. CRANE,
Att'y for Plaintiffs.

110 & 111 And upon the foregoing record said cause was duly submitted to said supreme court at the June term, 1884, thereof. And said court, having fully considered said record and the arguments presented by counsel, filed its decision on the 23d day of October, 1884, the same being in the words and figures following, to wit:

112 OCT. 23, 1884.

E. K. GOODNOW, Appellant,
vs.
R. B. CHAPMAN. } No. 10771.

Appeal from Webster district court.

BECK, J.:

Both parties appeal in this case. The plaintiff, first perfecting his appeal, is denominated the appellant.

The facts of the case and questions of law involved are the same as those in Goodnow *vs.* Litchfield, 19 N. W. Reporter, 226; Iowa Homestead Co. *vs.* Des Moines Navigation & R'y Co., Id., 231; Goodnow *vs.* Stryker, 16 N. W. Reporter, 456, S. C., 17 N. W. Reporter, 506. Some confusion and difficulty has resulted from submitting this case with others, and the failure to point out the distinctions in the several cases. We may express a hope that we will not
113 again have occasion to repeat the reference to such matters which we made in Iowa Homestead Co. *vs.* Des Moines Navigation & R'y Co., *supra*.

Following the cases above mentioned the decree of the district court is reversed, and the cause is remanded for a decree in harmony with our opinion in Goodnow *vs.* Litchfield, *supra;* that is to say, for a decree in favor of plaintiff for the amount of the taxes paid by him, with interest from the day of payment, which shall be declared to be a lien upon all the lands collectively upon which the taxes were paid.

Reversed.

George Crane, for appellant.
Theodore Hawley, for appellee.

114 And the plaintiff (def't in error) moving for a final judg't and decree in said supreme court, such motion was sustained; and on the 11th day of December, 1884, it being of the regular December term 1884, of said court, judgment and decree were approved, and duly entered of record, the same being the final judgment of said Supreme Court, and in the words and figures following, to wit:

115 EDWARD K. GOODNOW *vs.* R. B. CHAPMAN.

This cause coming on to be heard this 24 of Oct., 1884, the plaintiff appearing by George Crane, his attorney, and the defendant appearing by Theo. Hawley, his attorney, and the court having duly considered the issues, the evidence, and arguments of counsel, finds the issues in favor of the plaintiff.

It is therefore ordered, adjudged, and decreed that the plaintiff, Edward K. Goodnow, have and recover of and from the defendant, R. B. Chapman, the sum of twelve hundred eighty-seven and $\frac{40}{100}$ dollars, and interest thereon at six per cent. per annum, from the 13th day of March, A. D. 1883, and cost of suit, taxed at $140; and this decree be, and is hereby, made a special lien on the
116 following described lands: The northwest quarter of section five (5) and the northeast quarter of section nineteen (19), in township eighty-eight, range 27; the east half of the southwest quarter of section one, the northwest quarter and west half of southwest quarter of section seven, in township eighty-seven (87), range 27; the northeast quarter of section nine (9), south half of section nine (9), the northeast quarter of section seventeen, in township eighty-eight, range 28, all in Webster county, Iowa, from the 28 day of April, A. D. 1873. That the plaintiff have a special execution that the lands above described, or so much thereof as may be necessary, be sold thereunder according to law, and the proceeds of such sale be applied in payment of this decree and all costs, and that
117 the said Chapman and all persons claiming by, through, or under him be forever barred and foreclosed of all right and equity of redemption in and to said lands and every part thereof."

Endorsed: "Received copy of the within proposed decree, this seventh day of November, A. D. 1884. Theo. Hawley, def't's att'y."

And at the same time, at the request of the defendant (pl'ff in error), a supplemental decree, or certificate, was approved by the court, and the same was duly made a part of the record in said cause, said certificate or supplemental decree being in the words and figures following, to wit:

118 "EDWARD K. GOODNOW, Plaintiff,
vs.
R. B. CHAPMAN, Defendant.

And now, on the application of the defendant, R. B. Chapman, it is certified by the court here and ordered to be made part of the record herein that by the answer of the defendant and in defendant's assignment of errors and on the hearing in said cause the defendant claimed immunity from the entire demand and claim of plaintiff on the ground that, as he claimed, the same demand and claim had been adjudicated against plaintiff's assignor, The Iowa Homestead Company, by the Supreme Court of the United States in the case of The Iowa Homestead Company against The Des
119 Moines Navigation and Railroad Company and this defendant and others, at the October term thereof, A. D. 1872, and that our decision herein was and is against the immunity so claimed by defendant herein. And it is further certified and ordered to be made a part of the record herein that by defendant's answer, and on the hearing in said cause, defendant claimed immunity from said entire claim and demand, because,

as was claimed and alleged, the alleged cause of action, not having accrued within six years immediately preceding the commencement of this action, was barred by the statutes of limitations of the State of New York, and that to determine whether or not it was so barred it became material and necessary to decide whether or not the decision of the Supreme Court of the United States
120 in the case of Samuel G. Wolcott *vs.* The Des Moines Navigation & Railroad Company, reported in 5 Howard, 681, was a final determination of the question of title therein decided, in order to determine when the plaintiff's cause of action accrued, and that our decision herein was and is that said decision was not a final determination of said question, and was and is against the immunity so claimed because of our said decision that said determination was not final."

121 On the 3d day of February, 1885, there was filed in the office of the clerk of said supreme court a writ of error for the removal of said cause to the Supreme Court of the United States.

And on the same day there was filed in the office of said clerk a bond for the use and benefit of plaintiff (def't in error).

And on Feb'y 16th the citation was filed in the office of said clerk. Said writ of error, bond, and citation, together with endorsements thereon, are in the words and figures following, to wit:

122 "UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of the State of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in said supreme court before you between Edward K. Goodnow and Richard B. Chapman, wherein was drawn in question the validity of the authority exercised under the State of Iowa on the ground of its being repugnant to the laws of the United States, and the decision was in favor of the validity of such authority, and wherein certain rights, privileges, and immunities were claimed under a certain judgment of the Supreme Court of the United States and authority exercised under the United
123 States, and the decision was against the rights, privileges, and immunity so claimed, a manifest error hath happened, to the great damage of the said Richard B. Chapman, as by his complaint appears, we being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, directly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected of, the said
124 Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and

custom of the United States should be done. Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 3rd day of February, A. D. 1885.

[SEAL.] EDWARD R. MASON,
Clerk United States Circuit Court,
Southern District of Ia., Central Div.
JOSEPH M. BECK,
Chief Justice of the Supreme Court of the State of Iowa."

125 "Know all men by these presents, that we, Richard B. Chapman and E. D. G. Morgan and The Fort Dodge Coal Company, sureties, are held and firmly bound unto Edward K. Goodnow in the full and just sum of one thousand dollars, to be paid to the said Edward K. Goodnow, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Signed with our hands, and dated this 26th day of January, 1885. Whereas lately, at a term of the supreme court of Iowa, in a suit depending in said court between Edward K. Goodnow, plaintiff, and Richard B. Chapman, defendant, judgment was rendered against the said Richard B. Chapman, and the said Richard B. Chap-
126 man having obtained a writ of error and filed a copy thereof in the clerk's office of said court to remove the judgment in the aforesaid suit, and a citation directed to the said Edward K. Goodnow, admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., the second Monday of October next: Now, the condition of the above obligation is such that if the said Richard B. Chapman shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; otherwise in full force and virtue.

RICHARD B. CHAPMAN.
E. D. G. MORGAN.
FORT DODGE COAL CO.,
By J. L. PLATT, *Pt.*

127 STATE OF NEW YORK, } ss:
St. Lawrence Co., }

On this 25th day of January, 1885, before me personally came Richard B. Chapman, to me known to be one of the persons described in and who executed the above bond, and acknowledged that he executed the same.

[SEAL.] E. N. MERRIAM,
Notary Public, State of New York.

STATE OF IOWA, } ss:
Webster County, }

I, E. D. G. Morgan, the surety in the within bond, do say upon oath that I am worth in real estate in the State of Iowa, not exempt from execution, over and above my liabilities, double the full amount

of the within bond; that the said real estate above mentioned
128 does not include a homestead; that it is owned by me and duly recorded in my name; that the same is free from incumbrances.

E. D. G. MORGAN.

STATE OF IOWA, } ss:
Webster County, }

Subscribed and sworn to before me, this 29th day of January, 1885.

[SEAL.] THEO. HAWLEY,
Notary Public, Webster Co., Iowa.

STATE OF IOWA, } ss:
County of Webster, }

I, M. H. Bliss, clerk of the district court of the county and State aforesaid, do hereby certify that I consider the sureties, E. D. G. Morgan and J. L. Platt, pres., whose names are subscribed to the foregoing bond, are good and sufficient for the sum therein
129 named, and I, as said clerk, would accept and approve the same if presented to me in this county for the purposes therein set forth.

Witness my hand and seal of the district court, this 29th day of January, 1885.

[SEAL.] M. H. BLISS,
Clerk District Court.

STATE OF IOWA, } ss:
Webster County, }

I, J. L. Platt, being duly sworn, do depose and say: That I am the president of the Fort Dodge Coal Company, the surety named in the within bond; that said company is a citizen, resident, and freeholder in the State of Iowa, and is worth in real estate in said State, not exempt from execution, and over and above all its incumbrances, double the full amount of the within bond; that
130 said real estate does not include a homestead, and that it is owned and duly recorded in the name of said company.

J. L. PLATT.

Subscribed by J. L. Platt in my presence, and sworn to by him before me this 29th day of January, A. D. 1885.

[SEAL.] THEO. HAWLEY,
Notary Public, Webster Co., Iowa."

Endorsed: "This bond is approved this 2d Feb'y, 1885. J. M. Beck, ch. justice."

131 "The United States of America to Edward K. Goodnow, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed

in the clerk's office of the supreme court of Iowa, wherein Richard B. Chapman is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph M. Beck, chief justice of the supreme court of the State of Iowa, this second day of Febru-
132 ary, in the year of our Lord one thousand eight hundred and eighty-five.

JOSEPH M. BECK,
Chief Justice Supreme Court of Iowa.

Service of the within citation acknowledged this 5 day of February, A. D. 1885.

GEORGE CRANE,
Att'y for E. K. Goodnow.

133 RICHARD B. CHAPMAN, Pl'ff in Error,
vs.
EDWARD K. GOODNOW, Def't in Error.

STATE OF IOWA, *ss:*

I, G. B. Pray, clerk of the supreme court of Iowa, do hereby certify that the following is a full, true, and correct transcript of the record in the foregoing entitled cause, consisting of the abstract, supreme court decision, final judgment entry, and supplemental decree, together with copies of writ of error for the removal of said cause to the United States Supreme Court, writ of error, bond, and citation, as full, true, and complete as the same remain on file and of record in my office; and such transcript is made for and at the request of George Crane, att'y for defendant in error.

Witness my signature and the seal of said court, this 11th day of March, 1885.

[SEAL.]

G. B. PRAY,
Clerk Sup. Court of Iowa.

Endorsed on cover: Iowa Supreme Court. No. 1284. Richard B. Chapman, plaintiff in error, *vs.* Edward K. Goodnow. Filed March 18, 1885.